

WSR 17-22-036
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 24, 2017, 10:54 a.m., effective November 24, 2017]

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

Purpose: The department is repealing chapter 388-112 WAC and creating new chapter 388-112A WAC, Residential long-term care services training. The new chapter 388-112A WAC provides requirements for long-term care worker training and home care aide certification, specialty training curriculum and instructor requirements, and a new category of training and certification requirements for long-term care workers in enhanced services facilities. Chapter 388-112A WAC is organized to provide clarity in long-term care worker training, certification, curricula, and instructor requirements. New chapter organization chart available upon request to Suemary Trobaugh.

Citation of Rules Affected by this Order: New WAC 388-112A-0010, 388-112A-0020, 388-112A-0030, 388-112A-0040, 388-112A-0050, 388-112A-0060, 388-112A-0070, 388-112A-0080, 388-112A-0090, 388-112A-0095, 388-112A-0100, 388-112A-0105, 388-112A-0110, 388-112A-0115, 388-112A-0120, 388-112A-0200, 388-112A-0210, 388-112A-0220, 388-112A-0230, 388-112A-0240, 388-112A-0300, 388-112A-0310, 388-112A-0320, 388-112A-0330, 388-112A-0340, 388-112A-0350, 388-112A-0370, 388-112A-0400, 388-112A-0410, 388-112A-0420, 388-112A-0430, 388-112A-0440, 388-112A-0450, 388-112A-0460, 388-112A-0470, 388-112A-0480, 388-112A-0490, 388-112A-0495, 388-112A-0500, 388-112A-0510, 388-112A-0520, 388-112A-0530, 388-112A-0540, 388-112A-0550, 388-112A-0560, 388-112A-0570, 388-112A-0575, 388-112A-0580, 388-112A-0585, 388-112A-0590, 388-112A-0600, 388-112A-0610, 388-112A-0620, 388-112A-0700, 388-112A-0710, 388-112A-0720, 388-112A-0800, 388-112A-0810, 388-112A-0820, 388-112A-0830, 388-112A-0840, 388-112A-0900, 388-112A-0910, 388-112A-0920, 388-112A-0930, 388-112A-0940, 388-112A-0950, 388-112A-1000, 388-112A-1010, 388-112A-1020, 388-112A-1100, 388-112A-1110, 388-112A-1200, 388-112A-1210, 388-112A-1220, 388-112A-1230, 388-112A-1240, 388-112A-1250, 388-112A-1260, 388-112A-1270, 388-112A-1280, 388-112A-1285, 388-112A-1290, 388-112A-1295, 388-112A-1297, 388-112A-1300 and 388-112A-1310; and repealing WAC 388-112-0001, 388-112-0002, 388-112-0003, 388-112-0004, 388-112-0005, 388-112-0010, 388-112-0015, 388-112-0016, 388-112-0018, 388-112-0019, 388-112-0035, 388-112-0045, 388-112-0053, 388-112-0055, 388-112-0062, 388-112-0066, 388-112-0070, 388-112-0075, 388-112-0076, 388-112-0078, 388-112-0079, 388-112-0081, 388-112-0083, 388-112-0088, 388-112-0091, 388-112-0092, 388-112-0106, 388-112-0108, 388-112-0110, 388-112-0115, 388-112-0120, 388-112-0122, 388-112-0125, 388-112-0130, 388-112-0132, 388-112-0135, 388-112-0140, 388-112-0142, 388-112-0145, 388-112-0150, 388-112-0152, 388-112-0155, 388-112-0160, 388-112-0165, 388-112-0170, 388-112-0175, 388-112-0180, 388-112-0185, 388-112-0190, 388-112-0195, 388-112-0196, 388-112-01961, 388-112-

01962, 388-112-01963, 388-112-01964, 388-112-0197, 388-112-0200, 388-112-0205, 388-112-0207, 388-112-0210, 388-112-0225, 388-112-0235, 388-112-0240, 388-112-0250, 388-112-0255, 388-112-0260, 388-112-0265, 388-112-0270, 388-112-0275, 388-112-0280, 388-112-0285, 388-112-0290, 388-112-0295, 388-112-0300, 388-112-0305, 388-112-0310, 388-112-0315, 388-112-0320, 388-112-0325, 388-112-0330, 388-112-0335, 388-112-0345, 388-112-0355, 388-112-0360, 388-112-0365, 388-112-0370, 388-112-0380, 388-112-0383, 388-112-0385, 388-112-0390, 388-112-0395, 388-112-0400, 388-112-0405, and 388-112-0410.

Statutory Authority for Adoption: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030.

Adopted under notice filed as WSR 17-11-023 on May 10, 2017.

Changes Other than Editing from Proposed to Adopted Version:

1. In WAC 388-112A-0010(3) added "*when developed*" in reference to levels 2 and 3 capable caregiving curriculum;

2. As requested, added WAC 388-112A-0010(8) definition of "*core basic training*"; WAC 388-112A-0010(13) referred to long-term care worker definition;

3. As requested, added WAC 388-112A-0010(28) definition of "*seventy-hour long-term care worker basic training*" definition;

4. As requested, in WAC 388-112A-0010(30) removed sentence that training entities may only deliver approved curriculum;

5. As requested, added "*or administrator*" designee to assisted living facility (ALF) and enhanced services facility (ESF) administrator training requirement in WAC 388-112A-0030, 388-112A-0060, and 388-112A-0070;

6. As requested, replaced "*prior to employment*" with more precise description of "*prior to providing client services*" in WAC 388-112A-0070 and 388-112A-0495 when describing when long-term care workers must complete specialty training when working in ESFs;

7. As requested, replaced "*basic training*" reference with more precise description of "*seventy-hour long-term care worker basic training*" to rule and title, as applicable: WAC 388-112A-0040, 388-112A-0050, 388-112A-0060, 388-112A-0080, 388-112A-0090, 388-112A-0095, 388-112A-0110, 388-112A-0120, 388-112A-0200, 388-112A-0300, 388-112A-0310, 388-112A-0320, 388-112A-0330, 388-112A-0340, 388-112A-0350, 388-112A-0470, 388-112A-0550, 388-112A-0590, 388-112A-1020, and 388-112A-1110;

8. As requested, added "*nursing assistant students*" to training requirement tables who were previously identified only by reference to WAC 388-112A-0090: WAC 388-112A-0040, 388-112A-0050 and 388-112A-0060;

9. Added "*the orientation, safety, and seventy-hour long-term care worker basic training*" when describing what is the training in WAC 388-112A-0110;

10. As requested, added "*seventy-hour long-term care worker basic training, the two hours of orientation, and the three hours of safety training*" when describing what is the seventy-five hours of training in WAC 388-112A-0120.

Cheryl Strange
Secretary

11. As requested, added in WAC 388-112A-0210 examples of complaint telephone lines and resident grievance procedures, and referenced chapter 74.34 RCW;

12. As requested, combined WAC 388-112A-0360 into 388-112A-0340 by including what are required trainings that may be used as population specific training, thereby eliminating WAC 388-112A-0360;

13. As requested, clarified in WAC 388-112A-0540 that adult family homes (AFH) and ALFs must retain the nurse delegation certificates;

14. As requested, added the term "*negotiated service agreement*" to WAC 388-112A-0210 and 388-112A-0550;

15. As requested, in WAC 388-112A-0610 added information that continuing education (CE) is not required of licensed practical nurses, and registered nurses, and noted that CE is required for CNAs, and persons with special education training when those professions work in long-term care settings;

16. As requested, clarified the requirement in WAC 388-112A-0800 for ESF administrator training;

17. As requested, removed language in WAC 388-112A-0810 on period of time for certificate to be valid, and removed subsection (2) in its entirety;

18. As requested, added language to WAC 388-112A-0900 that competency tests are department of social and health services (DSHS) developed and distributed;

19. As requested, added language to WAC 388-112A-1100 to reference instructor guides and instructor policies that are distributed at the time of course approval, and clarified that certificate and attendance records may be kept electronically (eliminating the need to retain testing records);

20. As requested, removed language from WAC 388-112A-1210 that requires nonlong-term care worker training to be DSHS approved; and

21. As requested, clarified in WAC 388-112A-1240 and 388-112A-1297 that an instructor qualification for core basic, population specific, on the job training, AFH administrator training, and specialty training include the completion of an adult education class.

A final cost-benefit analysis is available by contacting Suemary Trobaugh, 4450 10th Avenue S.E., Lacey, WA 98503, phone 360-725-2516, fax 360-725-2646, email Suemary.Trobaugh@dshs.wa.gov.

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 87, Amended 0, Repealed 94.

Number of Sections Adopted at the Request of a Non-governmental 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 87, Amended 0, Repealed 94.

Date Adopted: October 20, 2017.

Chapter 388-112A WAC

RESIDENTIAL LONG-TERM CARE SERVICES TRAINING

SECTION I—DEFINITIONS, PURPOSE, AND APPLICABILITY

NEW SECTION

WAC 388-112A-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

(1) "**Activities of daily living**" means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, medication assistance, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) "**Applicant**" means:

(a) An individual who is applying for an adult family home license;

(b) An individual with an ownership interest in a partnership, corporation, or other entity that is applying for an adult family home license; or

(c) An individual who is applying for an enhanced services facility license.

(3) "**Capable caregiving training**" is the name of the DSHS developed training curricula in dementia and mental health that will be available in three class levels. The level one series of the class in both dementia and mental health meets the requirements provided in RCW 18.20.270 and 70.128.230 for specialty training. The level two and level three capable caregiving classes, when developed, in both topics may be completed for continuing education credits.

(4) "**Care team**" includes the resident and everyone involved in his or her care. The care team may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the resident's well-being. However, the resident directs the service plan when able.

(5) "**Challenge test**" means a competency test taken for specialty training without first taking the class for which the test is designed.

(6) "**Competency**" defines the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

(7) "**Competency testing**" including challenge testing, evaluates a student to determine if they can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course.

(8) "**Core basic training**" is the portion of the seventy-hour long-term care worker basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.

(9) "**Date of hire**" for determining timeframes related to training and certification, means the day an individual was first hired as a long-term care worker as determined by the department according to WAC 388-112A-0115.

(10) "**DDA**" means the developmental disabilities administration.

(11) "**Designee**" means a person in an assisted living facility or enhanced services facility who supervises long-term care workers and is designated by an assisted living facility administrator or enhanced services facility administrator to take the trainings in this chapter required of the facility administrator. An assisted living facility or enhanced services facility administrator may have more than one designee.

(12) "**Direct care worker**" means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes direct care workers).

(13) "**Direct supervision**" means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or has been exempted from the basic training requirements, and is on the premises and quickly available to the caregiver.

(14) "**DSHS**" or "**department**" refers to the department of social and health services.

(15) "**Enhancement**" means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course content and skills. Enhancements may include new student materials, videos or DVDs, online materials, and additional student activities.

(16) "**Entity representative**" means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

(17) "**Guardian**" means an individual as defined in chapter 11.88 RCW.

(18) "**Home**" refers to adult family homes, enhanced services facilities, and assisted living facilities.

(19) "**Home care aide certified**" or "**home care aide**" means a person who obtained and maintains a home care aide certification through the department of health.

(20) "**Indirect supervision**" means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or was exempted from basic training requirements, and who is quickly and easily available to the long-term care worker, but not necessarily on-site.

(21) "**Learning objectives**" are measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

(22) "**Long-term care worker**" includes:

(a) All persons who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities

under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) Long-term care workers do not include:

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

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

(23) "**Personal care services**" means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living, which is provided to meet the resident's care needs.

(24) "**Provider**" means any person or entity licensed by the department to operate an adult family home, enhanced services facility, or assisted living facility, or any person or entity certified by the department to provide instruction and support services to meet the needs of persons receiving services under Title 71A RCW.

(25) "**Resident**" means a person residing and receiving long-term care services at an assisted living facility, enhanced services facility, or adult family home. As applicable, "resident" also means the resident's legal guardian or other surrogate decision maker.

(26) "**Resident manager**" means a person employed or designated by the provider to manage the adult family home who meets the requirements in WAC 388-76-10000 and this chapter.

(27) "**Routine interaction**" means regular contact with residents.

(28) "**Seventy-hour long-term care worker basic training**" means the seventy-hours of required training that a new long-term care worker must complete within one hundred and twenty days of hire. It has three components: core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.

(29) "**Specialty training**" refers to curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

(30) "**Training entity**" means an organization, including an independent contractor, who provides or may provide training under this chapter using approved curriculum.

NEW SECTION

WAC 388-112A-0020 What are the purposes of this chapter? The purposes of this chapter are to describe the following:

- (1) Training and certification requirements that apply to adult family homes and assisted living facilities on or before January 6, 2012;
- (2) Training and certification requirements that apply to adult family homes and assisted living facilities on or after January 7, 2012;
- (3) Training and certification requirements that apply to enhanced services facilities on or after January 1, 2016; and
- (4) Curricula and instructor requirements.

NEW SECTION

WAC 388-112A-0030 Who do the training requirements apply to? The training requirements in this chapter apply to:

- (1) Adult family home providers, applicants, resident managers, entity representatives, long-term care workers, and volunteers;
- (2) Assisted living facility administrators or administrator designees, long-term care workers, and volunteers; and
- (3) Enhanced services facility applicants, administrators or administrator designees, long-term care workers, and volunteers.

NEW SECTION

WAC 388-112A-0040 When did the seventy-hour long-term care worker basic training requirements go into effect? (1) The seventy-hour long-term care worker basic training requirements in this chapter for long-term care workers in adult family homes and assisted living facilities and their administrators or administrator designees went into effect January 7, 2012.

- (2) The long-term care worker basic training requirements in effect by their employer at the time on or before January 6, 2012 apply to individuals who:
 - (a) Were hired on or before January 6, 2012; and
 - (b) Completed basic training within the required time frames.
- (3) The seventy-hour long-term care worker basic training requirements for long-term care workers, administrators or administrator designees, and applicants in enhanced services facilities went into effect on January 1, 2016.

NEW SECTION

WAC 388-112A-0050 What are the training and certification requirements for volunteers and long-term care workers in adult family homes, adult family home providers, and adult family home applicants? (1) The following chart provides a summary of the training and certification requirements for volunteers and long-term care workers in adult family homes and adult family home providers:

Who	Status	Facility Orientation	Safety/orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Certification as a home care aide (HCA)
(a) Adult family home resident manager, or long-term care worker in adult family home.	(i) An ARNP, RN, LPN, NA-C, NA-C student or other professionals listed in WAC 388-112A-0090.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Required per WAC 388-112A-0400.	Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC. Required twelve hours per WAC 388-112A-0610 for NA-Cs, and other professionals listed in WAC 388-112A-0090, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.	Not required.
	(ii) A long-term care worker employed on January 6, 2012 or was previously employed sometime between January 1, 2011 and January 6, 2012 and has completed the basic training requirements in effect on the date of his or her hire. WAC 388-112A-0090.	Required per WAC 388-112A-0200(1).	Not required	Not required.	Required per WAC 388-112A-0400.	Required twelve hours per WAC 388-112A-0610.	Not required.

Who	Status	Facility Orientation	Safety/orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Certification as a home care aide (HCA)
	(iii) Employed in an adult family home and does not meet the criteria in subsection (1)(a) or (b) of this section. Meets definition of long-term care worker in WAC 388-112A-0010.	Not required.	Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112-0400.	Required. Twelve hours per WAC 388-112A-0610.	Required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065).
(b) Adult family home provider.	A person who has an adult family home license and does not meet the criteria in subsection (1)(a)(i), (ii), or (iii) of this section. This requirement applies to an entity representative of a licensed entity. WAC 388-76-1000.	Not required.	Completed prior to licensing.	Completed prior to licensing.	Completed prior to licensing.	Required. Twelve hours per WAC 388-112A-0610.	Completed prior to licensing.
(c) Volunteer staff in adult family home.	An unpaid person.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Not required.	Not required.	Not required.

(2) The following chart provides a summary of the training and certification requirements for adult family home applicants prior to licensure and adult family home resident managers prior to assuming the duties of the position:

Who	Status	Orientation and safety training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Certification as a home care aide (HCA)
(a) Adult family home applicant.	(i) An RN, LPN, ARNP, NA-C, NA-C student and other professionals as listed in WAC 388-112A-0090.	Not required.	Not required.	Required per WAC 388-112A-0400.	Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC.	Not required.

Who	Status	Orientation and safety training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Certification as a home care aide (HCA)
					Required twelve hours per WAC 388-112A-0610 for NACs, and other professionals listed in WAC 388-112A-0090, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. The CE is not required during application process.	
	(ii) A long-term care worker employed on January 6, 2012 or was previously employed sometime between January 1, 2011 and January 6, 2012 and has completed the basic training requirements in effect on the date of his or her hire, WAC 388-112A-0090.	Not required.	Not required.	Required per WAC 388-112A-0400.	Required twelve hours per WAC 388-112A-0610. The CE is not required during application process.	Not required.
	(iii) Seeking a license to operate an adult family home and is not exempt under subsection (2)(a)(i) or (ii) of this section. WAC 388-112A-0030.	Required. Five hours per WAC 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112A-0400.	Required twelve hours per WAC 388-112A-0610. The CE is not required during application process.	Required per WAC 388-112A-0105.
(b) Adult family home resident manager.	Employed or designated by the provider to manage an adult family home and is not exempt under subsection (2)(a)(i) or (ii) of this section. WAC 388-112A-0030.	Required. Five hours per WAC 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112A-0400.	Required. Twelve hours per WAC 388-112A-0610.	Required per WAC 388-112A-0105.

(3) The remainder of this chapter describes the training and certification requirements in more detail.

(4) The following training requirements are not listed in the charts in subsection (1) and (2) of this section but are required under this chapter:

- (a) First aid and CPR under WAC 388-112A-0720;
- (b) Nurse delegation under WAC 388-112A-0500 and 388-112A-0560; and
- (c) Adult family home (AFH) administrator training under WAC 388-112A-0810.

NEW SECTION

WAC 388-112A-0060 What are the training and certification requirements for volunteers and long-term care workers in assisted living facilities and assisted living facility administrators? (1) The following chart provides a summary of the training and certification requirements for volunteers and long-term care workers in assisted living facilities and assisted living administrators or administrator designees:

Who	Status	Facility orientation	Safety/ori-entation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Certification as a home care aide (HCA)
(a) Long-term care worker in assisted living facility.	(i) An ARNP, RN, LPN, NA-C, NA-C student or other professionals listed in WAC 388-112A-0090.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Required per WAC 388-112A-0400.	Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC. Required. Twelve hours per WAC 388-112A-0610 for NA-Cs, and other professionals listed in WAC 388-112A-0090, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.	Not required.
	(ii) A long-term care worker employed on January 6, 2012 or was previously employed sometime between January 1, 2011 and January 6, 2012 and has completed the basic training requirements in effect on the date of his or her hire. WAC 388-112A-0090.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Required per WAC 388-112A-0400.	Required. Twelve hours per WAC 388-112A-0610.	Not required.

Who	Status	Facility orientation	Safety/orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Certification as a home care aide (HCA)
	(iii) Employed in an assisted living facility and does not meet the criteria in subsection (1)(a) or (b) of this section. Meets the definition of long-term care worker in WAC 388-112A-0010.	Not required.	Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112A-0400.	Required. Twelve hours per WAC 388-112A-0610.	Required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065).
(b) Assisted living facility administrator or administrator designee.	A qualified assisted living facility administrator or administrator designee who does not meet the criteria in subsection (1)(a)(i), (ii), or (iii) of this section.	Not required.	Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112A-0400.	Required. Twelve hours per WAC 388-112A-0610.	Required per WAC 388-112A-0105.
(c) Volunteer staff in assisted living facility.	An unpaid person.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Not required.	Not required.	Not required.

(2) The remainder of this chapter describes the training and certification requirements in more detail.

(3) The following training requirements are not listed in the charts in subsections (1) of this section but are required under this chapter:

- (a) First aid and CPR under WAC 388-112A-0720;
- (b) Nurse delegation under WAC 388-112A-0500 and 388-112A-0560;
- (c) Assisted living facility (ALF) administrator training under WAC 388-78A-2521.

NEW SECTION

WAC 388-112A-0070 What are the training and certification requirements for applicants, administrators or their designees, volunteers, and long-term care workers in enhanced services facilities? (1) The following chart provides a summary of the training and certification requirements for applicants, administrators or their designees, volunteers, and long-term care workers in enhanced services facilities:

Who	Status	Facility orientation	Safety/ orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Quarterly in-service education	Certification as a home care aide (HCA)
(a) Enhanced services facility (ESF) applicant, administrator or their designee, or long-term care worker in ESF.	(i) An ARNP, RN, LPN, NA-C, NA-C student or other professionals listed in WAC 388-112A-0090.	Required by WAC 388-112A-0200(1).	Not required.	Not required.	Per WAC 388-107-0650 for applicants required prior to facility licensing and for administrators and long-term care workers prior to providing client services.	Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC. Required twelve hours per WAC 388-112A-0610 for NA-Cs, and other professionals listed in WAC 388-112A-0090, such as individuals with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. Per WAC 388-107-0670, ten hours must be in subject appropriate for residents served in the facility.	Required of employees per WAC 388-107-0680.	Not required.

Who	Status	Facility orientation	Safety/ orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Quarterly in-service education	Certification as a home care aide (HCA)
	(ii) Enhanced services facility (ESF) applicant that does not meet the criteria in subsection (1)(a)(i) of this section.	Not required.	Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0340.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Per WAC 388-107-0650 for applicants required prior to facility licensing.	Required. Twelve hours per WAC 388-112A-0610. Per WAC 388-107-0660 and 388-107-0670, ten hours must be in subjects appropriate for residents served in the facility.	Required of employees per WAC 388-107-0680.	Required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 388-107-0630(6)(b).
	(iii) A long-term care worker who was employed on January 6, 2012 or was previously employed sometime between January 1, 2011 and January 6, 2012 and has completed the basic training requirements in effect on his or her hire date. WAC 388-112A-0090.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Required per WAC 388-112A-0400 and prior to providing client services per WAC 388-107-0650.	Required. Twelve hours per WAC 388-112A-0610. Per WAC 388-107-0660 and 388-107-0670, ten hours must be in subjects appropriate for residents served in the facility.	Required of employees per WAC 388-107-0680.	Not required.

Who	Status	Facility orientation	Safety/ orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Quarterly in-service education	Certification as a home care aide (HCA)
	(iv) Employed in an enhanced services facility and does not meet the criteria in subsection (1)(a)(i), (ii) or (iii) of this section. Meets definition of long-term care worker in WAC 388-112A-0010.	Not required.	Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112A-0400 and prior to providing client services per WAC 388-107-0650.	Required. Twelve hours per WAC 388-112A-0610. Per WAC 388-107-0660 and 388-107-0670, ten hours must be in subjects appropriate for residents served in the facility.	Required of employees per WAC 388-107-0680.	Required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065).
(b) Volunteer staff in adult family home or assisted living facility.	An unpaid person.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Not required.	Not required.	Not required.	Not required.

(2) The remainder of this chapter and chapter 388-107 WAC describes the training and certification requirements in more detail.

(3) The following training requirements are not listed in the chart in subsection (1) of this section but are required under this chapter:

- (a) First aid and CPR under WAC 388-112A-0720; and
- (b) Enhanced services facility (ESF) administrator training under WAC 388-112A-0800.

NEW SECTION

WAC 388-112A-0080 Who is required to complete the seventy-hour long-term care worker basic training and by when? The following individuals must complete the seventy-hour long-term care worker basic training unless exempt as described in WAC 388-112A-0090:

Adult family homes.

(1) Adult family home applicants must complete the seventy-hour long-term care worker basic training and become certified before the adult family home is licensed.

(2) Adult family home entity representatives and resident managers before they assume the duties of their position in the adult family home.

(3) Long-term care workers in adult family homes within one hundred twenty days of date of hire. Long-term care workers must not provide personal care without direct supervision until they have completed the seventy-hour long-term care worker basic training.

Assisted living facilities.

(4) Assisted living facility administrators or their designees within one hundred twenty days of date of hire.

(5) Long-term care workers in assisted living facilities within one hundred twenty days of their date of hire. Long-term care workers must not provide personal care without direct supervision until they have completed the seventy-hour long-term care worker basic training.

Enhanced services facilities.

(6) Enhanced services facility applicants must complete the seventy-hour long-term care worker basic training and become certified before the enhanced services facility is licensed.

(7) Enhanced services facility administrators or their designees must complete the seventy-hour long-term care

worker basic training within one hundred twenty days of date of hire.

(8) Long-term care workers in enhanced services facilities must complete the seventy-hour long-term care worker basic training within one hundred twenty days of their date of hire. Long-term care workers must not provide personal care without direct supervision until they have completed the seventy-hour long-term care worker basic training.

(9) For certification requirements for individuals in subsections (2) through (8) in this section refer to WAC 388-112A-0105.

NEW SECTION

WAC 388-112A-0090 Which long-term care workers are exempt from the seventy-hour long-term care worker basic training requirement? The following long-term care workers are exempt from the seventy-hour long-term care worker basic training requirement:

(1) An applicant for an adult family home license on or before January 6, 2012 who met the basic training requirements in effect at the time of application;

(2) A person employed as a long-term care worker on January 6, 2012 who completed the basic training requirements in effect on the date of his or her hire;

(3) A person employed as a long-term care worker on January 6, 2012 who completed within one hundred twenty days of hire the basic training requirements in effect on the date of his or her hire;

(4) A person previously employed as a long-term care worker who completed the basic training requirements in effect on the date of his or her hire and was employed as a long-term care worker at some point between January 1, 2011 and January 6, 2012;

(5) Washington state department of health registered nurses, licensed practical nurses, and advanced registered nurse practitioners licensed under chapter 18.79 RCW;

(6) Washington state department of health nursing assistants certified under chapter 18.88A RCW and persons in an approved training program for certified nursing assistants under chapter 18.88A RCW provided that they complete the training program within one hundred twenty days of the date of hire and the department of health has issued them their nursing assistant certified credential within two hundred days of the date of hire;

(7) A home health aide who was employed by a medicare certified home health agency within the year before the home health aide was hired as a long-term care worker and has met the requirements of 42 C.F.R. Sec. 484.36; and

(8) An individual with special education training with an endorsement granted by the Washington state superintendent of public instruction as described in RCW 28A.300.010.

NEW SECTION

WAC 388-112A-0095 What actions may the department take if a provider does not comply with the requirements of this chapter? (1) If a provider knowingly employs an individual who has not satisfied the seventy-hour long-term care worker basic training or certification requirements

under this chapter, the department must take one or more of the following enforcement actions under:

(a) RCW 18.20.190(2), for assisted living facility providers;

(b) RCW 70.128.160(2), for adult family home providers;

(c) RCW 70.97.110, for enhanced services facilities.

(2) Except as required under subsection (1) of this section, if a provider fails to comply with any requirements under this chapter, the department may take one or more of the following enforcement actions under:

(a) RCW 18.20.190(2), for assisted living facility providers;

(b) RCW 70.128.160(2), for adult family home providers;

(c) RCW 70.97.110, for enhanced services facilities.

NEW SECTION

WAC 388-112A-0100 Is the department authorized by RCW 74.39A.086 to take enforcement action for non-compliance related to the seventy-hour long-term care worker basic training and home care aide certification requirements? The department is authorized under RCW 74.39A.086 to take enforcement action for noncompliance related to training and certification requirements.

NEW SECTION

WAC 388-112A-0105 Who is required to obtain home care aide certification and by when? Unless exempt under WAC 246-980-070, the following individuals must be certified by the department of health as a home care aide within the required timeframes:

(1) All long-term care workers, within two hundred days of the date of hire;

(2) If a long-term care worker is limited English proficient and the department of health has issued a provisional certification, within two hundred sixty days of the date of hire;

(3) Adult family home applicants, before licensure;

(4) Adult family home entity representatives and resident managers, before assuming the duties of the position;

(5) Assisted living facility administrators or their designees within two hundred calendar days of the date of hire.

(6) Enhanced services facility applicants, before licensure; and

(7) Enhanced services facility administrators or their designees within two hundred days of the date of hire.

NEW SECTION

WAC 388-112A-0110 May a home employ a long-term care worker who has not completed the seventy-hour long-term care worker basic training or certification requirements? (1) If an individual previously worked as a long-term care worker, but did not complete the training or certification requirements under RCW 18.88B.041, 74.39A.074, 74.39A.076, and this chapter, an adult family home, enhanced services facility, or assisted living facility must not employ the individual to work as a long-term care

worker until the individual has completed the required training or certification unless the date of hire has been reset as described under subsection (2) of this section.

(2) The original date of hire may be reset once for each home care aide applicant after a minimum of one year has passed since the initial date of hire.

(3) Individuals who meet the criteria in subsection (2) of this section are allowed a new one hundred twenty days to complete the orientation, safety, and seventy-hour long-term care worker basic trainings and a new two hundred days to become certified as a home care aide, if required by WAC 246-980-020.

(4) Individuals who meet the criteria in subsection (2) of this section must submit a new application and fee to the department of health.

NEW SECTION

WAC 388-112A-0115 How do we determine a long-term care worker's date of hire? (1) The department determines a long-term care worker's date of hire under RCW 18.88B.021(1) by one of the following, whichever occurs first:

(a) The initial service begin date when hired as an individual provider;

(b) The date of hire when the individual was paid to provide personal care by a home care agency; or

(c) The date of hire when the individual was paid to provide personal care by a home licensed by the state.

(2) The date of hire is specific to each long-term care worker. It does not change when a long-term care worker changes clients or employers unless the long-term care worker meets the criteria in WAC 388-112A-0110.

(3) This section does not apply to background check requirements under this chapter.

NEW SECTION

WAC 388-112A-0120 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? (1) Successful completion of seventy-hour long-term care worker basic training, the two hours of orientation, and the three hours of safety training (referred to collectively as the seventy-five hours of training) must be documented on a DSHS seventy-five hour training certificate by an approved training entity verifying that a total of seventy-five hours of approved training have occurred.

(2) An approved training entity issuing and signing a DSHS seventy-five hour training certificate must verify that the long-term care worker has the certificates required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and the seventy-hour long-term care worker basic training, as described in this chapter. When applying to the department of health for home care aide certification, the long-term care worker may only submit a seventy-five hour training certificate that has been issued by the department or the training partnership.

(3) For home care aide recertification, successful completion of twelve hours of DSHS approved continuing educa-

tion training must be documented on a certificate(s) or transcript(s) issued by a department approved training entity.

(4) The long-term care worker, certified home care aide, and employer must retain any twelve hour training certificates or transcripts for as long as the long-term care worker is employed.

SECTION II—ORIENTATION AND SAFETY TRAINING

NEW SECTION

WAC 388-112A-0200 What is orientation training, who should complete it, and when should it be completed?

There are two types of orientation training: Facility orientation training and long-term care worker orientation training.

(1) Facility orientation. Individuals who are exempt from certification as described in RCW 18.88B.041 and volunteers are required to complete facility orientation training before having routine interaction with residents. This training provides basic introductory information appropriate to the residential care setting and population served. The department does not approve this specific orientation program, materials, or trainers. No test is required for this orientation.

(2) Long-term care worker orientation. Individuals required to complete the seventy-hour long-term care worker basic training must complete long-term care worker orientation, which is two hours of training regarding the long-term care worker's role and applicable terms of employment as described in WAC 388-112A-0210.

(a) All long-term care workers who are not exempt from certification as described in RCW 18.88B.041 hired on or after January 7, 2012, must complete two hours of long-term care worker orientation training before providing care to residents.

(b) Long-term care worker orientation training must be provided by qualified instructors that meet the requirements in WAC 388-112A-1260.

(c) The department must approve long-term care worker orientation curricula and instructors.

(d) There is no test for long-term care worker orientation.

NEW SECTION

WAC 388-112A-0210 What content must be included in facility and long-term care worker orientation? (1) For those individuals identified in WAC 388-112A-0200(1) who must complete facility orientation training:

(a) Orientation training may include the use of videotapes, audiotapes, and other media if the person overseeing the orientation is available to answer questions or concerns for the person(s) receiving the orientation. Facility orientation must include introductory information in the following areas:

(i) The care setting;

(ii) The characteristics and special needs of the population served;

(iii) Fire and life safety, including:

(A) Emergency communication (including phone system if one exists);

(B) Evacuation planning (including fire alarms and fire extinguishers where they exist);

(C) Ways to handle resident injuries and falls or other accidents;

(D) Potential risks to residents or staff (for instance, aggressive resident behaviors and how to handle them); and

(E) The location of home policies and procedures;

(iv) Communication skills and information, including:

(A) Methods for supporting effective communication among the resident/guardian, staff, and family members;

(B) Use of verbal and nonverbal communication;

(C) Review of written communications and documentation required for the job, including the resident's service plan;

(D) Expectations about communication with other home staff; and

(E) Who to contact about problems and concerns;

(v) Universal precautions and infection control, including:

(A) Proper hand washing techniques;

(B) Protection from exposure to blood and other body fluids;

(C) Appropriate disposal of contaminated/hazardous articles;

(D) Reporting exposure to contaminated articles, blood, or other body fluids; and

(E) What staff should do if they are ill;

(vi) Resident rights, including:

(A) The resident's right to confidentiality of information about the resident;

(B) The resident's right to participate in making decisions about the resident's care and to refuse care;

(C) Staff's duty to protect and promote the rights of each resident and assist the resident to exercise his or her rights;

(D) How staff should report concerns they may have about a resident's decision on his or her care and who they should report these concerns to;

(E) Staff's duty to report any suspected abuse, abandonment, neglect, or exploitation of a resident;

(F) Advocates that are available to help residents (such as long-term care ombudsmen and organizations); and

(G) Complaint lines, hot lines, and resident grievance procedures such as, but not limited to:

(i) The DSHS complaint hotline at 1-800-562-6078;

(ii) The Washington state long-term care ombudsman program;

(iii) The Washington state department of health and local public health departments;

(iv) The local police;

(v) Facility grievance procedure; and

(b) In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

(2) For long-term care worker orientation required of those individuals identified in WAC 388-112A-0200(2), long-term care worker orientation is a two hour training that must include introductory information in the following areas:

(a) The care setting and the characteristics and special needs of the population served;

(b) Basic job responsibilities and performance expectations;

(c) The care plan or negotiated service agreement, including what it is and how to use it;

(d) The care team;

(e) Process, policies, and procedures for observation, documentation, and reporting;

(f) Resident rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care and how the long-term care worker will protect and promote these rights;

(g) Mandatory reporter law and worker responsibilities as required under chapter 74.34 RCW; and

(h) Communication methods and techniques that may be used while working with a resident or guardian and other care team members.

(3) One hour of completed classroom instruction or other form of training (such as a video or online course) in long-term care orientation training equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

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

NEW SECTION

WAC 388-112A-0220 What is safety training, who must complete it, and when should it be completed? (1)

Safety training is part of the long-term care worker requirements. It is a three hour training that must meet the requirements of WAC 388-112A-0230 and include basic safety precautions, emergency procedures, and infection control.

(2) The following individuals must complete safety training:

(a) All long-term care workers who are not exempt from certification as described in RCW 18.88B.041 hired after January 7, 2012, must complete three hours of safety training. This safety training must be provided by qualified instructors that meet the requirements in WAC 388-112A-1260.

(3) The department must approve safety training curricula and instructors.

(4) There is no test for safety training.

NEW SECTION

WAC 388-112A-0230 What content must be included in safety training? (1) Safety training must consist of introductory information in the following areas:

(a) Safety planning and accident prevention, including but not limited to:

(i) Proper body mechanics;

(ii) Fall prevention;

(iii) Fire safety;

(iv) In-home hazards;

(v) Long-term care worker safety; and

(vi) Emergency and disaster preparedness.

(b) Standard precautions and infection control, including but not limited to:

(i) Proper hand washing;

(ii) When to wear gloves and how to correctly put them on and take them off;

- (iii) Basic methods to stop the spread of infection;
 - (iv) Protection from exposure to blood and other body fluids;
 - (v) Appropriate disposal of contaminated and hazardous articles;
 - (vi) Reporting exposure to contaminated articles; and
 - (vii) What to do when the worker or the resident is sick or injured, including who to report this to.
- (c) Basic emergency procedures, including but not limited to:
- (i) Evacuation preparedness;
 - (ii) When and where to call for help in an emergency;
 - (iii) What to do when a resident is falling or falls;
 - (iv) Location of any advance directives if available; and
 - (v) Basic fire emergency procedures.
- (2) One hour of completed classroom instruction or other form of training (such as video or online course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.
- (3) In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

NEW SECTION

WAC 388-112A-0240 What documentation is required for facility orientation training? (1) The adult family home, enhanced services facility, and assisted living facility must maintain documentation that facility orientation training has been completed as required by this chapter. The training and documentation must be issued by the home or service provider familiar with the facility and must include:

- (a) The name of the student;
 - (b) The title of the training;
 - (c) The number of hours of the training;
 - (d) The signature of the instructor providing facility orientation training;
 - (e) The student's date of hire; and
 - (f) The date(s) of facility orientation.
- (2) The documentation required under this section must be kept in a manner consistent with chapter 388-76 WAC for adult family homes, chapter 388-107 WAC for enhanced services facilities, and chapter 388-78A WAC for assisted living facilities.

SECTION III—BASIC TRAINING

NEW SECTION

WAC 388-112A-0300 What is the seventy-hour long-term care worker basic training? (1) The seventy-hour long-term care worker basic training is in addition to orientation and safety training. It is seventy-hours and includes:

- (a) The core competencies and skills that long-term care workers need in order to provide personal care services effectively and safely;
 - (b) Practice and demonstration of skills; and
 - (c) Population specific competencies.
- (2) DSHS must approve the seventy-hour long-term care worker basic training curricula.

(3) On-the-job training may be applied to the seventy-hour long-term care worker basic training for an amount that must be approved by the department;

(4) The DSHS developed revised fundamentals of caregiving (RFOC) or another department approved training may be used to teach the seventy-hour long-term care worker basic training but it must include enhancements. Additional student materials are required to ensure the enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-112A-1020. Examples of enhancements include, but are not limited to:

- (a) More time for workers to practice skills including:
 - (i) The mechanics of completing the skill correctly;
 - (ii) Resident centered communication and problem solving associated with performing the skill;
 - (iii) The different levels of care required for each skill including independent, supervision, limited, extensive, and total;
 - (iv) Working with assistive devices associated with a skill;
 - (v) Helpful tips or best practices in working through common resident challenges associated with a skill; and
 - (vi) Disease specific concerns or challenges associated with a skill.

(b) Augmenting or adding additional materials, student activities, videos, or guest speakers that:

- (i) More deeply reinforce and fortify the learning outcomes required for basic training;
- (ii) Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care; and

(iii) Prepares workers for the certification testing environment and process.

(c) Enhancements are not materials or activities that are one or more of the following:

- (i) Are out of the scope of practice for a long-term care worker such as content clearly written for registered nurses;
- (ii) Are identical to, or a direct replacement of, those already included in the RFOC;
- (iii) Fail to reinforce Washington state laws associated with resident rights and resident directed care;
- (iv) Long-term care workers are not paid to provide;
- (v) Are written above a high school reading level.

(5) The delivery mode of the seventy-hour long-term care worker basic training may be either in-person instruction or a hybrid of online and in-person modules. One hour of completed classroom instruction or other form of training (such as a video or online course) equals one hour of training.

(a) Online modules must be an instructor led class, such as a webinar or an interactive online class that provides the student with access to the instructor and adheres to the DSHS online class standards posted on DSHS's website.

(b) The in-person portion of hybrid modules must be no less than twelve hours of the total basic training hours and include in-person instruction on the personal care assistance tasks supporting activities of daily living, commonly referred to as skills training.

(6) The long-term care worker must be able to ask the instructor questions during the training.

(7) There is no challenge test for the seventy-hour long-term care worker basic training.

NEW SECTION

WAC 388-112A-0310 What topics must be taught in the core competencies of the seventy-hour long-term care worker basic training for long-term care workers? The core competencies of the seventy-hour long-term care worker basic training for long-term care workers must include all of the competencies described in WAC 388-112A-0320 and the following topics:

- (1) Communication skills;
- (2) Long-term care worker self-care;
- (3) Problem solving;
- (4) Resident rights and maintaining dignity;
- (5) Abuse, abandonment, neglect, financial exploitation, and mandatory reporting;
- (6) Resident directed care;
- (7) Cultural sensitivity;
- (8) Body mechanics;
- (9) Fall prevention;
- (10) Skin and body care;
- (11) Long-term care worker roles and boundaries;
- (12) Supporting activities of daily living;
- (13) Food preparation and handling;
- (14) Medication assistance;
- (15) Infection control, blood-borne pathogens, HIV/AIDS; and
- (16) Grief and loss.

NEW SECTION

WAC 388-112A-0320 What are the core competencies and learning objectives for the seventy-hour long-term care worker basic training? The seventy-hour long-term care worker basic training includes core competencies that describe the behavior and skills that a long-term care worker must exhibit when working with residents and the learning objectives associated with each competency as follows:

- (1) Regarding communication, communicate effectively and in a respectful and appropriate manner with residents, family members, and care team members:
 - (a) Recognize how verbal and nonverbal cues impact communication with the resident and care team;
 - (b) Engage and respect the resident through verbal and nonverbal communication;
 - (c) Listen attentively and determine that the resident, when able, understands what has been communicated;
 - (d) Recognize and acknowledge resident's communication including indicators of pain, confusion, or misunderstanding;
 - (e) Utilize communication strategies to deal with difficult situations; and
 - (f) Recognize common barriers to effective communication and identify how to eliminate them.
- (2) Regarding long-term care worker self-care:
 - (a) Identify behaviors, practices, and resources to reduce stress and avoid burnout;

(b) Recognize common barriers to self-care and ways to overcome them; and

(c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout, and the importance of taking action to practice self-care to avoid burnout.

(3) Regarding the competency of effective problem solving, use effective problem solving skills:

(a) Explain why it is necessary to understand and utilize a problem solving method;

(b) Implement a problem solving process/method; and

(c) Identify obstacles to effective problem solving and ways to overcome them.

(4) Regarding the competency of resident rights and dignity, take appropriate action to promote and protect a resident's legal and human rights as protected by federal and Washington state laws, including:

(a) Protect a resident's confidentiality including what is considered confidential information, who a long-term care worker is allowed or not allowed to give confidential information to, and how to respond if a noncare team member asks for confidential information;

(b) Promote a resident's dignity and privacy and encourage and support a resident's maximum independence when providing care;

(c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints and use common, safe alternatives to restraint use; and

(d) Protect and promote the resident's right to live free of abuse, neglect, abandonment, and financial exploitation.

(5) Regarding the competency of recognizing indicators of abuse and understanding the mandatory reporting requirements, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care workers' responsibilities as a mandatory reporter as described in RCW 74.34.020 through 74.34.053; and

(b) Identify common indications of abuse, abandonment, neglect, and financial exploitation.

(6) Regarding the competency of resident directed care, take appropriate action when following a resident's direction regarding his or her care:

(a) Describe a worker's role in resident directed care including determining, understanding, and supporting a resident's choices;

(b) Describe the importance and impact of resident directed care on a resident's independence, self-determination, and quality of life;

(c) Identify effective problem solving strategies that help balance a resident's choice with personal safety; and

(d) Report concerns when a resident refuses care or makes choices that present a possible safety concern.

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care; and

(b) Use methods to determine and ensure that these are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of

proper body mechanics while performing tasks as outlined in the service plan.

(9) Regarding the competency of fall prevention:

(a) Identify fall risk factors and take action to reduce fall risks for a resident; and

(b) Take proper steps to assist a resident who is falling or has fallen.

(10) Regarding the competency of skin and body care, use of personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a resident's skin, when to observe it and what to look for, including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what action to take if a resident appears to be developing or develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a resident's skin integrity including position changes when sitting or lying for extended periods, and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and who to report them to.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a resident's condition or disease for which they are receiving services and describe how to use this information to provide appropriate, individualized care;

(b) Describe a resident's baseline functioning level using information provided in the service plan and explain why it is important to know a resident's baseline;

(c) Identify changes in a resident's physical, mental, and emotional state through observation;

(d) Report changes from baseline and concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements (such as coming to work on time) and describe how maintaining these standards are critical to a resident's safety and well-being;

(f) Explain the purpose of a service plan and describe how it is created, used, and modified;

(g) Use a resident's service plan to direct a worker's job tasks and any resident directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-112A-0550, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in the care team;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

(i) Helping a resident walk;

(ii) Transferring a resident from a bed to a wheelchair;

(iii) Turning and repositioning a resident in bed;

(iv) Providing oral care;

(v) Cleaning and storing dentures;

(vi) Shaving a face;

(vii) Providing fingernail care;

(viii) Providing foot care;

(ix) Providing a bed bath;

(x) Assisting a resident with a weak arm to dress;

(xi) Putting knee-high elastic stockings on a resident;

(xii) Providing passive range of motion for one shoulder;

(xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting a resident to eat;

(xv) Assisting with peri-care;

(xvi) Assisting with the use of a bedpan;

(xvii) Assisting with catheter care;

(xviii) Assisting with condom catheter care; and

(xix) Providing medication assistance;

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate resident preferences, maintain privacy and dignity, support the resident's level of ability, and assure his or her comfort and safety;

(c) Appropriately utilize assistive device(s) specified on the service plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a resident's bowel and bladder functioning baseline and when to report changes.

(13) Regarding the core competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a resident's health;

(b) Plan, shop, and prepare meals for a resident according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the service plan and resident preferences;

(c) Describe common signs of poor nutrition and hydration, when to report concerns, and who to report concerns to;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a resident;

(e) Recognize when a resident's food choices vary from specifications on the care plan and describe when to report concerns and who to report them to;

(f) Describe what causes food borne illness, the risks associated with food borne illness, and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including:

(i) Avoiding cross contamination from one food to another;

(ii) Safe storage requirements for cooling of leftover foods, including:

(A) Depth;

(B) Types of containers and temperatures;

(C) The need to maintain food at proper temperatures to limit bacterial growth; and

(D) What are the safe food storage and holding temperatures for both cold and hot foods;

(iii) Best practices for thawing and reheating food; and

(iv) Using clean gloves (if possible) and clean utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and symptoms must not prepare food.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects, when to report concerns, and who to report them to;

(d) Store medications according to safe practices and the label instructions;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with a resident who refuses to take medications, identifying when to report when a resident refuses medication or there are other medication-related concerns and who to report these concerns to, and identifying what is considered a medication error, when to report a medication error, and who to report it to.

(15) Regarding the competency of infection control and blood borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit, and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;

(d) Demonstrate proper hand washing and putting on and taking off gloves;

(e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy microorganisms on surfaces;

(h) Describe what blood-borne (BB) pathogens are and how they are transmitted;

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;

(j) Identify measures to take to prevent BB diseases;

(k) Describe what to do if exposed to BB pathogens and how to report an exposure;

(l) Describe how HIV works in the body;

(m) Explain that testing and counseling for HIV/AIDS is available;

(n) Describe the common symptoms of HIV/AIDS;

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality, and nondiscrimination; and

(p) Explain the importance of emotional issues and support for residents and long-term care workers.

(16) Regarding the competency on grief and loss, support yourself and the resident in the grieving process:

(a) Define grief and loss;

(b) Describe common losses a resident and long-term care worker may experience;

(c) Identify common symptoms associated with grief and loss;

(d) Describe why self-care is important during the grieving process; and

(e) Identify beneficial ways and resources to work through feelings of grief and loss.

(17) Long-term care workers who complete a DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(18) Long-term care workers who complete a DSHS approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

(19) Regarding the competency on identifying indicators of hearing loss, which may be part of the basic training or population specific hours:

(a) Identify common symptoms associated with hearing loss; and

(b) Identify what to do for hearing loss related concerns, including describing ways to communicate with a resident who is experiencing hearing loss and identifying when and to whom to report when a resident's hearing ability changes.

NEW SECTION

WAC 388-112A-0330 What is on-the-job training?

(1) Effective July 1, 2012, on-the-job training is a method of training where the long-term care worker successfully demonstrates in the seventy-hour long-term care worker basic training, the core competencies in personal care and

infection control skills while working with a resident on the job, instead of in a practice training setting.

(2) A qualified instructor as defined in WAC 388-112A-1240 provides on-the-job training and directly observes, coaches, and reinforces skills training for up to two long-term care workers at a time. The qualified instructor who provides the on-the-job training:

(a) Need not be the same instructor who taught the core competency training; and

(b) May be the immediate supervisor of the long-term care worker who receives the on-the-job training.

(3) The person who oversees on-the-job training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training;

(b) Verify on a department approved skills checklist the long-term care worker's successful completion of the demonstrated skills; and

(c) Not relinquish his or her duties to trainee caregivers when acting as a trainer.

(4) The department must approve the number of on-the-job hours included in the seventy-hour long-term care worker basic training.

NEW SECTION

WAC 388-112A-0340 What is the population specific component of the seventy-hour long-term care worker basic training and what required training may be used as population specific training? (1) Population specific basic training is training on topics unique to the care needs of the population that the home or provider serves. Topics may include but are not limited to:

- (a) Dementia;
- (b) Mental health;
- (c) Developmental disabilities;
- (d) Young adults with physical disabilities; and
- (e) Aging and older adults.

(2) Population specific classes, as required under WAC 388-112A-0400, may include but are not limited to:

(a) DSHS developed or approved specialty training, such as:

- (i) Dementia specialty training;
- (ii) Mental health specialty training; and
- (iii) Developmental disabilities specialty training.

(b) DSHS developed or approved curriculum on population specific topics, such as:

- (i) Traumatic brain injury, surviving and thriving; and
- (ii) Navigating challenging behaviors; and
- (c) For long-term care workers in assisted living facilities and adult family homes, nurse delegation core training and nurse delegation specialized diabetes training may be used to meet all or some of the population specific component of the seventy-hour long-term care worker basic training.

NEW SECTION

WAC 388-112A-0350 What documentation is required to show completion of the seventy-hour long-term care worker basic training and five hour orientation

and safety training? (1) Long-term care worker basic training must be documented by a department certificate of successful completion of seventy-five hours of training that is issued by the instructor or training entity and includes:

- (a) The name of the student;
- (b) The name of the training;
- (c) The number of hours of the training;
- (d) The name and department number of the home or training entity giving the training;

(e) The name and signature of the instructor who has an identification number (I-code) to be authorized to sign the certificate, who provided one of the following classes:

- (i) Core basic training;
- (ii) Population specific training; or
- (iii) Specialty training;

(f) The name and identification number (I-code) of the instructor for core competencies and the home or training entity giving the training; and

(g) The completion date of training.

(2) The student must be given an original certificate for proof of completion of the training that the student must retain for his or her records. The provider, and if applicable, the training entity must keep a copy of the certificate as described in WAC 388-76-10198 for adult family homes and as described in WAC 388-78A-2450 for assisted living facilities.

NEW SECTION

WAC 388-112A-0370 What are the requirements for using basic training to meet the specialty training requirements? When basic training is used to meet the specialty training requirements:

(1) The curriculum for specialty training must include the department developed competencies and learning objectives as described in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450. Homes or providers may enhance the specialty training component by adding additional competencies, learning objectives, content, or activities. If the department approves the enhancements and an increased number of training hours, the worker's training hours will apply to the seventy-hour training requirement.

(2) Long-term care workers must pass the department competency test described in WAC 388-112A-0910 to meet the applicable licensing requirements for adult family homes, enhanced services facilities, and assisted living facilities for all specialty training.

SECTION IV—SPECIALTY TRAINING

NEW SECTION

WAC 388-112A-0400 What is specialty training and who is required to take it? (1) Specialty training refers to approved curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities.

(2) Specialty training classes are different for each population served and are not interchangeable. Specialty training

curriculum must be DSHS developed, as described in WAC 388-112A-0010(3), or DSHS approved.

(a) In order for DSHS to approve a curriculum as a specialty training class, the class must use the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

(i) Training entities that currently use classes approved as alternative curriculum for specialty training must update and submit their curricula for approval prior to June 30, 2018.

(ii) After July 1, 2018, training entities must not use classes approved as alternative curriculum for specialty training that are not using the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450 to meet the specialty training requirement.

(b) Curricula approved as specialty training may be integrated with basic training if the complete content of each training is included.

(3) Assisted living facility administrators or their designees, enhanced services facility administrators or their designees, adult family home applicants or providers, resident managers, and entity representatives who are affiliated with homes that service residents who have special needs, including developmental disabilities, dementia, or mental health, must take one or more of the following specialty training curricula:

(a) Developmental disabilities specialty training as described in WAC 388-112A-0420;

(b) Dementia specialty training as described in WAC 388-112A-0440;

(c) Mental health specialty training as described in WAC 388-112A-0450.

(4) All long-term care workers including those exempt from basic training who work in an assisted living facility, enhanced services facility, or adult family home who serve residents with the special needs described in subsection (3) of this section, must take a class approved as specialty training. The specialty training applies to the type of residents served by the home as follows:

(a) Developmental disabilities specialty training as described in WAC 388-112A-0420.

(b) Dementia specialty training as described in WAC 388-112A-0440; and

(c) Mental health specialty training as described in WAC 388-112A-0450.

(5) Specialty training may be used to meet the requirements for the basic training population specific component if completed within one hundred twenty days of the date of hire.

(6) For long-term care workers who have completed the seventy-five hour training and do not have a specialty training certificate that indicates completion and competency testing, the long-term care worker must complete specialty training when employed by the adult family home, enhanced services facility, or assisted living facility that serves residents with special needs.

NEW SECTION

WAC 388-112A-0410 What specialty training is required if a resident has more than one special need? (1)

If a resident has needs in more than one of the special needs areas, the adult family home, enhanced services facility, or assisted living facility must determine which of the specialty training classes will most appropriately address the overall needs of the resident and ensure that the appropriate specialty training class is completed as required.

(2) If additional training beyond the specialty training class is needed to meet all of the resident's needs, the adult family home, enhanced services facility, or assisted living facility must ensure that additional training is completed.

NEW SECTION

WAC 388-112A-0420 What topics must developmental disabilities specialty training include? (1) Developmental disabilities specialty training must include all of the competencies and learning objectives described in WAC 388-112A-0430 for the following topics:

(a) Overview of developmental disabilities;

(b) Values of service delivery;

(c) Effective communication;

(d) Introduction to interactive planning;

(e) Understanding behavior;

(f) Crisis prevention and intervention; and

(g) Overview of legal issues and resident rights.

(2) For adult family homes, the developmental disabilities administration (DDA) will provide in-home technical assistance to the adult family home upon admission of the first resident eligible for services from DDA and, thereafter, as determined necessary by DSHS.

NEW SECTION

WAC 388-112A-0430 What are the competencies and learning objectives for the long-term care worker developmental disability specialty training? The following developmental disabilities specialty competencies describe the behavior and skills a long-term care worker must exhibit when working with residents and include learning objectives associated with each competency:

(1) Regarding the competency on an overview of developmental disabilities, draw upon a basic understanding of developmental disabilities and demonstrate awareness of the unique needs of residents with developmental disabilities:

(a) Define developmental disability and describe intellectual disability, cerebral palsy, epilepsy, and autism;

(b) Identify common myths and misconceptions about developmental disabilities;

(c) Describe the negative effects of using labels such as "retarded" or "handicapped" to represent people and positive alternatives; and

(d) Differentiate between developmental disabilities and mental illness.

(2) Regarding the competency on values of service delivery, promote and support a resident's self-determination:

(a) Identify the principle of normalization and its significance to the work of long-term care workers;

(b) Explain how understanding each resident's needs leads to better services and supports, which lead to better outcomes for the resident;

(c) Describe each of the residential services guidelines and identify how the values represented in the guidelines are important in the lives of people with developmental disabilities;

(d) Describe the principle of self-determination; and

(e) Identify positive outcomes for residents with developmental disabilities when they are connected to the community they live in.

(3) Regarding the competency on communication, provide culturally compassionate and individualized care by utilizing a basic understanding of a resident or resident's history, experience, and cultural beliefs:

(a) List the key elements of effective communication;

(b) Describe the impact communication has on the lives of residents with developmental disabilities;

(c) Explain the impact a long-term care worker's behavior can have on eliciting communication;

(d) Explain the impact of a resident's physical environment on his or her ability to communicate;

(e) Describe methods of communication, other than verbal, that long-term care workers might use when supporting residents with developmental disabilities; and

(f) List tips for communication with residents with developmental disabilities.

(4) Regarding the competency on interactive planning, using person-centered and interactive planning when working with residents with developmental disabilities:

(a) Identify the benefits of using a person-centered planning process rather than the traditional planning methods used to develop supports for people with developmental disabilities;

(b) Identify key elements involved in interactive planning;

(c) Identify ways to include people with developmental disabilities and their families in the planning process; and

(d) Identify the required planning document for the setting and list ways to have a positive impact on the plan.

(5) Regarding the competency on challenging behaviors, use a problem solving approach and positive support principles when dealing with challenging behaviors:

(a) Identify the essential components of the concept of positive behavioral supports;

(b) Define the "ABCs" and describe how to use that process to discover the function of behavior;

(c) Explain why it is critical to understand the function of behavior before developing a support plan;

(d) Define reinforcement and identify ways to utilize it as a tool to increase a resident's ability to be successful;

(e) Identify the problems with using punishment to manage behavior;

(f) Identify behavior management techniques that are not allowed under DSHS policies and applicable laws;

(g) Identify factors that can positively and negatively influence the behavior of residents with developmental disabilities; and

(h) List steps to be taken when crisis or danger to people is immediate.

(6) Regarding the competency on crisis prevention, support a resident experiencing a crisis and get assistance when needed:

(a) Identify behaviors in people with developmental disabilities that might constitute "normal stress;"

(b) Define "crisis;"

(c) Differentiate the behaviors a resident who is in crisis exhibits from mental illness;

(d) Identify the principles of crisis prevention and intervention;

(e) Identify what types of situations require outside assistance and at what point it becomes necessary; and

(f) Name several ways to provide support to a resident experiencing a crisis.

(7) Regarding the competency on legal rights, promote and protect the legal and resident rights of residents with developmental disabilities:

(a) Explain how the rights of residents with disabilities compare to those of the general population;

(b) List the rights of residents living in adult family homes and assisted living facilities and the laws that support those rights;

(c) Describe how long-term care workers can help residents to exercise their rights;

(d) List ways a caregiver or long-term care worker must safeguard each resident's confidentiality;

(e) Describe the three types of guardianship a resident with developmental disabilities might be subject to and why;

(f) List less restrictive alternatives to guardianship;

(g) Describe the responsibilities, powers, and limitations of a guardian; and

(h) Describe the relationship between long-term care workers and guardians/families.

NEW SECTION

WAC 388-112A-0440 What must dementia specialty training include? Curricula developed and approved as dementia specialty training must include all of the knowledge, skills, topics, competencies, and learning objectives described in this section.

(1) Understanding dementia.

(a) Introduction to dementia. The caregiver will review common signs, symptoms, and types of dementia and identify the difference between dementia and conditions that might look like dementia.

(i) What is dementia: symptoms, causes, parts of the brain, types of dementia; and

(ii) What is not dementia: forgetfulness, depression, delirium, urinary tract infection, mild cognitive impairment.

(b) Hallucinations and delusions. The caregiver will identify common hallucinations and delusions a person with dementia may exhibit and identify physical, emotional, and environmental causes of hallucinations and delusions.

(i) What is baseline;

(ii) Hallucinations: visual, auditory, causes; and

(iii) Delusions: what are delusions, other causes.

(c) Setting the tone. The caregiver will distinguish between positive and negative interactions and ways to enhance quality of life for the individual.

(i) The role and characteristics of the caregiver: empathy, dependability, patience, strength, flexibility, creativity;

(ii) Self-care: reducing personal stress, setting goals, communicating effectively, asking for help, exercise, nutrition;

- (iii) Learning from emotions;
- (iv) Support;
- (v) Environmental influences on the tone;
- (vi) Enhancing the environment; and
- (vii) Schedule planning.

(d) Working with families. The caregiver will recognize common emotions family members experience with a loved one who has dementia, identify some difficulties family members may experience or express about their loved one's care, and provide resources for families.

- (i) Understanding the family unit;
 - (ii) Working with and supporting family members and friends; and
 - (iii) Building trust.
- (2) Living with dementia.

(a) Sexuality and intimacy. The caregiver will identify safe and unsafe expressions of sexuality and steps to take in the best interest of the individual.

- (i) Sexuality and intimacy;
- (ii) Sexualized behavior;
- (iii) Do no harm;
- (iv) Attitudes;
- (v) Lesbian, gay, bisexual, transgender, questioning (LGBTQ);

(vi) Changes: reduced interest, increased interest, sexual aggression, inhibitions, coping and frustrations;

- (vii) Client rights;
- (viii) Consent;
- (ix) Abuse;
- (x) Talking to families about sex;
- (xi) Caregiver responsibility; and
- (xii) Reporting nonconsensual sexual contact.

(b) Medications, treatments, and therapies. The caregiver will identify possible medication side effects, ways to respond to side effects, and recognize nondrug therapies to alleviate some symptoms of dementia.

- (i) Conventional medicine: general dementia medication, other drugs used with people who have dementia;
- (ii) Medication side effects and reporting side effects;
- (iii) Chemical restraints;
- (iv) Medication refusal; and
- (v) Nondrug therapies: natural medicine, cannabis, holistic therapies, nutrition.

(3) Activities of daily living (ADL). The caregiver will identify ways to assist with activities of daily living such as bathing, dressing, eating, oral care, and toileting while focusing on the individual's strengths.

- (a) Helping with activities of daily living;
- (b) Self-directed and staff-directed activities;
- (c) Creating an environment to support activities;
- (d) Assisting with challenging ADLs;
- (e) Assisting with bathing;
- (f) Assisting with dressing;
- (g) Assisting with eating;
- (h) Assisting with oral care; and
- (i) Assisting with toileting.

(4) Fostering communication and understanding.

(a) Communicating with people who have dementia. The caregiver will be able to demonstrate an ability to recognize communication styles and ways to communicate effectively.

- (i) Verbal and nonverbal communication;
- (ii) Progression of dementia and communication impact;
- (iii) Early, middle, and late phase dementia; and
- (iv) Approach: nonverbal gestures, giving and receiving information, listening and interpreting information, communicating respect, open-ended questions, reason, logic and time, asking not telling, saying less, gentle deception.

(b) Trauma informed care. The caregiver will recognize that past traumas can affect current thinking, behaviors, and actions, and will identify strategies to provide trauma informed care.

- (i) Coping mechanisms;
 - (ii) Impact of culture;
 - (iii) Trauma informed care;
 - (iv) Principles of trauma informed care: safety, trustworthiness, choice, collaboration, empowerment; and
 - (v) Strategies for care.
- (5) Challenging behaviors.

(a) Approaching challenging behaviors. The caregiver will demonstrate the sequence of steps to approach challenging behaviors.

(i) Strategy for approaching behaviors: Stop, identify, take action.

- (A) Stop, identify, take action;
- (B) Calming techniques;
- (C) Expressing a need or desire;
- (D) Physical, environmental, and emotional triggers;
- (E) Minimizing or eliminating the trigger;
- (F) Approaching a client; and
- (ii) Document and report.

(b) Tips for dealing with specific challenging behaviors. The caregiver will demonstrate an understanding of navigating challenging situations.

- (i) Anger;
- (ii) Combative during personal care;
- (iii) Cries and tearfulness;
- (iv) Disrobes in public;
- (v) Eats nonedible substances/objects;
- (vi) Hallucinations and delusions;
- (vii) Inappropriate toileting/menses activity;
- (viii) Injures self;
- (ix) Intimidates/threatens;
- (x) Mood swings;
- (xi) Repetitive anxious complaints or questions;
- (xii) Repetitive physical movements and pacing;
- (xiii) Resistive to care with words and gestures;
- (xiv) Rummages through or takes belongings of others;
- (xv) Seeks vulnerable sexual partner;
- (xvi) Sexual acting out;
- (xvii) Spitting;
- (xviii) Unrealistic fears or suspicions;
- (xix) Unsafe smoking;
- (xx) Up at night while others are sleeping and requires interventions;
- (xxi) Verbally abusive; and
- (xxii) Wanders and is exit seeking.

NEW SECTION

WAC 388-112A-0450 What must mental health specialty training include? Curricula approved as mental health specialty training must include all of the knowledge, skills, topics, competencies and learning objectives described in this section.

(1) Introduction to mental disorders. The caregiver will review definitions, common signs, and symptoms and identify types of mental illness.

- (a) Understanding mental disorders;
- (b) Stigma and mental disorders;
- (c) Myths and facts;
- (d) Differentiating forms of mental disorders; and
- (e) Mental health conditions:
 - (i) Attention deficit hyperactivity disorder;
 - (ii) Anxiety disorder;
 - (iii) Autism;
 - (iv) Bipolar disorder;
 - (v) Borderline personality disorder;
 - (vi) Depression;
 - (vii) Dissociative disorder;
 - (viii) Eating disorders;
 - (ix) Obsessive-compulsive disorder;
 - (x) Posttraumatic stress disorder;
 - (xi) Schizoaffective disorder;
 - (xii) Schizophrenia; and
 - (xiii) Related conditions including but not limited to:
 - (A) Anosognosia;
 - (B) Dual diagnosis;
 - (C) Psychosis;
 - (D) Risk of suicide;
 - (E) Self-harm;
 - (F) Sleep disorders; and
 - (G) Substance abuse.

(2) Compassionate and trauma-informed caregiving for mental health. The caregiver will recognize that culture, generation, religion, and past trauma experiences can affect current thinking, behaviors, and actions, and will identify strategies to provide informed care and support resilience.

- (a) Impact of culture and ethnicity;
- (b) Impact of generation;
- (c) Impact of religion;
- (d) Trauma and mental disorders;
- (e) Trauma informed care;
- (f) Trauma informed approach; and
- (g) Resilience.

(3) Supports for wellness. The caregiver will identify possible medication side effects, ways to respond to side effects, and recognize individualized nondrug therapies to alleviate symptoms of mental illness.

- (a) Baseline;
- (b) What good mental health looks like;
- (c) Person centered care planning; and
- (d) Medication, treatments, and therapies.
 - (i) Conventional medicine:
 - (A) Antipsychotic;
 - (B) Antimania;
 - (C) Anticonvulsants;
 - (D) Antianxiety; and

(E) Other drugs used with people who have mental disorders;

- (ii) Medication side effects and reporting side effects;
- (iii) Chemical restraints;
- (iv) Medication refusal; and
- (v) Nondrug therapies:
 - (A) Natural medicine;
 - (B) Cannabis;
 - (C) Holistic therapies; and
 - (D) Nutrition.

(4) Getting help and self-care. The caregiver will recognize the importance of caregiver wellness and identify strategies to prevent secondary trauma and burnout.

- (a) Caregiver mental wellness;
- (b) Secondary trauma;
- (c) Strategies to cope with caregiver burnout; and
- (d) Seeking outside help.

(5) Respectful communication. Communication dynamics. The caregiver will demonstrate an ability to recognize communication styles and ways to communicate effectively.

- (a) Communication and privacy;
- (b) Listening;
- (c) Empathy;
- (d) Nonverbal vs verbal communication;
- (e) Seeking clarification;
- (f) Communication and triggering challenging behaviors; and
- (g) Behaviors impacting communication.

(6) Boundaries. The caregiver will demonstrate an understanding of creating healthy professional boundaries.

- (a) Importance of boundaries for good mental health;
- (b) Personal and professional boundaries;
- (c) Setting boundaries; and
- (d) Assertiveness.

(7) Creative approaches to challenging behaviors. The caregiver will demonstrate the sequence of steps to approach challenging behaviors.

- (a) Approach: Stop, identify, take action;
- (b) Set limits and providing consistency; and
- (c) Specific behaviors and tips on how to respond:
 - (i) Anger;
 - (ii) Combative during personal care;
 - (iii) Cries and tearfulness;
 - (iv) Disrobes in public;
 - (v) Eats nonedible substances/objects;
 - (vi) Hallucinations and delusions;
 - (vii) Inappropriate toileting/menses activity;
 - (viii) Injures self;
 - (ix) Intimidates/threatens;
 - (x) Mood swings;
 - (xi) Repetitive anxious complaints or questions;
 - (xii) Repetitive physical movements and pacing;
 - (xiii) Resistive to care with words and gestures;
 - (xiv) Rummages through or takes belongings of others;
 - (xv) Seeks vulnerable sexual partner;
 - (xvi) Sexual acting out;
 - (xvii) Spitting;
 - (xviii) Unrealistic fears or suspicions;
 - (xix) Unsafe smoking;

(xx) Up at night while others are sleeping and requires interventions;

(xxi) Verbally abusive; and

(xxii) Wanders and is exit seeking.

(8) Crisis management. The caregiver will identify potential stressors to prevent crisis and demonstrate steps for de-escalation.

(a) What is crisis;

(b) Averting crisis;

(c) Decomensation;

(d) Aggression and violence; and

(e) When a crisis occurs.

(9) Suicide prevention. The caregiver will identify suicide facts, recognize warning signs, and communicate about suicide.

(a) History;

(b) Risk facts;

(c) Indicators;

(d) Asking questions;

(e) Talking about suicide;

(f) Resources;

(g) Hazards;

(h) Stigma;

(i) History of the caregiver;

(j) Medically assisted suicide; and

(k) Grief support.

NEW SECTION

WAC 388-112A-0460 Who must complete competency testing for specialty training? The following individuals must pass the DSHS competency test as provided under this chapter for successful completion of the specialty training class:

(1) All adult family home applicants or providers, resident managers or designees, entity representatives, and long-term care workers;

(2) All assisted living facility administrators or designees, and long-term care workers; and

(3) All enhanced services facility administrators or designees, and long-term care workers.

NEW SECTION

WAC 388-112A-0470 Is there a challenge test for specialty training classes? (1) Individuals may take the DSHS challenge test instead of the required specialty training class. A person who does not pass a challenge test on the first attempt must attend the specialty training class.

(2) A challenge test is not permitted when specialty training is taken to meet the population specific component of the seventy-hour long-term care worker basic training under WAC 388-112A-0340.

NEW SECTION

WAC 388-112A-0480 What documentation is required for successful completion of specialty training?

(1) Specialty training must be documented by a department certificate of successful completion, awarded by the instructor or training entity that includes:

(a) The name of the student;

(b) The name of the specialty training;

(c) The number of training hours;

(d) The name and department number of the home or training entity;

(e) The instructor's signature; and

(f) The date of completion.

(2) The training entity must give the student an original certificate. The employer must keep a copy of the certificate on file.

NEW SECTION

WAC 388-112A-0490 When must facility applicants, resident managers, administrators and other types of entity representatives complete specialty training? Adult family homes.

(1) Adult family home applicants, providers, entity representatives, and resident managers must complete specialty training or developmental disability caregiver training and demonstrate competency before the home is licensed or before a new entity representative or resident manager assumes the duties of the position in order to admit or serve residents who have special needs related to mental illness, dementia, or a developmental disability.

(2) If a resident develops special needs while living in a home without a specialty designation, the provider, entity representative, and resident manager have one hundred twenty days to complete specialty training or developmental disability caregiver training and demonstrate competency.

Assisted living facilities.

(3) If an assisted living facility serves one or more residents with special needs, the assisted living facility administrator or his or her designee must complete specialty training or developmental disability caregiver training and demonstrate competency within one hundred twenty days of date of hire.

(4) If a resident develops special needs while living in an assisted living facility, the assisted living facility administrator or his or her designee has one hundred twenty days to complete specialty training and demonstrate competency.

Enhanced services facilities.

(5) Enhanced services facilities applicants, providers, entity representatives, and resident managers must complete dementia and mental health specialty training and demonstrate competency before the home is licensed or before a new entity representative or resident manager assumes the duties of the position in order to admit or serve residents who have special needs related to mental illness, dementia, or a developmental disability.

(6) If a resident develops special needs while living in a home without a specialty designation, the provider, entity representative, and resident manager have one hundred twenty days to complete developmental disability specialty training and demonstrate competency.

NEW SECTION

WAC 388-112A-0495 What are the facility long-term care workers' specialty training deadlines and what is the

requirement for supervision until the training is completed? Adult family homes.

(1) If an adult family home serves one or more residents with special needs, long-term care workers must complete and demonstrate competency in specialty training within one hundred twenty days of hire.

(2) During the period to complete the specialty training the long-term care worker must not provide personal care to a resident with special needs without direct supervision until that long-term care worker demonstrates competency in specialty training.

(3) The long-term care worker may have indirect supervision if the long-term care worker is one or more of the following:

(a) The long-term care worker is a nursing assistant certified (NA-C) under chapter 18.88A RCW;

(b) The long-term care worker is a certified home care aide (HCA) under chapter 18.88B RCW;

(c) The long-term care worker is a licensed practical nurse (LPN) under chapter 18.79 RCW;

(d) The long-term care worker is a registered nurse (RN) under chapter 18.79 RCW;

(e) The long-term care worker meets the exemption criteria described in WAC 388-112A-0090.

Assisted living facilities.

(4) If an assisted living facility serves one or more residents with special needs, long-term care workers must complete and demonstrate competency in specialty training within one hundred twenty days of hire.

(5) During the period to complete the specialty training, the long-term care worker must not provide personal care to a resident with special needs without indirect supervision until that long-term care worker demonstrates competency in specialty training.

Enhanced services facilities.

(6) Enhanced services facilities are facilities that serves one or more residents with special needs, and long-term care workers must complete and demonstrate competency in mental health and dementia specialty training prior to providing client services.

(7) Long-term care workers are not required to complete specialty training if the adult family home or assisted living facility has no residents with a special need where the specialty training is required.

SECTION V—NURSE DELEGATION CORE TRAININGNEW SECTION

WAC 388-112A-0500 What is nurse delegation core training? (1) Nurse delegation core training is required before certified or registered nursing assistants or certified home care aides may be delegated a nursing task.

(2) DSHS approves instructors for nurse delegation core training.

NEW SECTION

WAC 388-112A-0510 What knowledge and skills must nurse delegation core training include? Only the DSHS developed curriculum for nurse delegation entitled, "nurse delegation for nursing assistants & home care aides," meets the training requirement for nurse delegation core training.

NEW SECTION

WAC 388-112A-0520 Is competency testing required for nurse delegation core training? Passing the DSHS competency test is required for successful completion of nurse delegation core training, as provided under WAC 388-112A-0900 through 388-112A-0950.

NEW SECTION

WAC 388-112A-0530 Is there a challenge test for nurse delegation core training? There is no challenge test for nurse delegation core training.

NEW SECTION

WAC 388-112A-0540 What documentation is required for successful completion of nurse delegation core training? (1) Nurse delegation core training must be documented by a department certificate of successful completion of training, issued by the instructor or training entity, that includes:

(a) The name of the trainee;

(b) The name of the training;

(c) The name and department number of the training entity giving the training;

(d) The instructor's name and signature; and

(e) The date(s) of training.

(2) The training entity must give the student an original certificate. Adult family homes and assisted living facilities must keep a copy of the certificate on file.

NEW SECTION

WAC 388-112A-0550 Who is required to complete nurse delegation core training and nurse delegation specialized diabetes training and by when? (1) Before performing any delegated nursing task, long-term care workers in adult family homes and assisted living facilities must:

(a) Successfully complete the DSHS designated nurse delegation core training, "nurse delegation for nursing assistants & home care aides";

(b) Be one or more of the following:

(i) Certified home care aide under chapter 18.88B RCW;

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

(iii) If the long-term care worker is exempt from the home care aide certification under WAC 246-980-070, the long-term care worker must be a nursing assistant registered and complete the core competencies of basic training, unless they already completed the twenty-eight hours of revised fundamentals of care or a department approved alternative;

(iv) If nurse delegation is needed to implement a care plan or negotiated service agreement earlier than home care aide certification can be obtained, the long-term care worker must become a nursing assistant registered and complete core competencies (the core basic training) of the seventy-hour long-term care worker basic training.

(2) Before long-term care workers in adult family homes and assisted living facilities may perform the task of insulin injections, the long-term care workers must:

(a) Meet the requirements in subsections (1)(a) and (b) of this section; and

(b) Successfully complete the DSHS designated specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112A-0560 What is specialized diabetes nurse delegation training? Specialized diabetes nurse delegation training is the required training for certified or registered nursing assistants or certified home care aides, who will be delegated the task of insulin injections. DSHS approves the instructors for specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112A-0570 What knowledge and skills must specialized diabetes nurse delegation training include? Specialized diabetes nurse delegation training consists of three modules on diabetes, insulin, and injections. Only the curriculum developed by DSHS, "nurse delegation for nursing assistants: special focus on diabetes," may be used for the specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112A-0575 Is competency testing required for the specialized diabetes nurse delegation training? Passing the DSHS competency test is required for successful completion of the specialized diabetes nurse delegation training, as provided under WAC 388-112A-0900 through 388-112A-0950.

NEW SECTION

WAC 388-112A-0580 Is there a challenge test for specialized diabetes nurse delegation training? There is no challenge test for specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112A-0585 What documentation is required for successful completion of specialized diabetes nurse delegation training? (1) Specialized diabetes nurse delegation training must be documented by a department certificate of successful completion of training, issued by the instructor or training entity, that includes the following:

- (a) The name of the trainee;
- (b) The name of the training;

(c) The name and department number of the training entity giving the training;

(d) The instructor's name and signature; and

(e) The date(s) of the training.

(2) The instructor or training entity must give the trainee an original certificate. Adult family homes and assisted living facilities must keep a copy of the certificate on file.

NEW SECTION

WAC 388-112A-0590 May nurse delegation core and specialized diabetes training occur in the same year as the seventy-hour long-term care worker basic training? (1) Nurse delegation core and specialized diabetes training may occur in the same year as basic training if required to be able to perform delegated tasks. The training hours may apply to the population specific component of the seventy-hour long-term care worker basic training.

(2) Long-term care workers in enhanced services facilities are not permitted to perform nurse delegated tasks.

SECTION VI—CONTINUING EDUCATION

NEW SECTION

WAC 388-112A-0600 What is continuing education and what topics may be covered in continuing education?

(1) Continuing education is annual training designed to promote professional development and increase a caregiver's knowledge, expertise, and skills. DSHS must approve continuing education curricula and instructors. The same continuing education course must not be repeated for credit unless it is a new or more advanced training on the same topic. However, long-term care workers may repeat up to five credit hours per year on the following topics:

- (a) Blood borne pathogens and infection control;
- (b) CPR training;
- (c) First aid training;
- (d) Food handling training;
- (e) Health insurance portability and accountability act (HIPAA);
- (f) Medication assistance;
- (g) Disaster preparedness;
- (h) Aging sensitivity;
- (i) Resident rights as it relates to caregiving issues in chapter 70.129 RCW;
- (j) Resident safety;
- (k) Abuse and neglect identification and mandatory reporting; and

(l) Topics where the assisted living facility, enhanced services facility, or adult family home can demonstrate a need for retraining.

(2) Continuing education must be on a topic relevant to the care setting, care needs of residents, or long-term care worker career development. In addition to the topics listed in subsection (1) of this section, topics or course may include:

- (a) Personal care services;
- (b) Mental illness;
- (c) Dementia;
- (d) Developmental disabilities;
- (e) Depression;

- (f) Communication skills;
 - (g) Positive resident behavior support;
 - (h) Developing or improving resident centered activities;
 - (i) Dealing with wandering or aggressive resident behaviors;
 - (j) De-escalating challenging behaviors; and
 - (k) Medical conditions.
- (3) Nurse delegation core and nurse delegation specialized diabetes training hours when not applied to basic training hours may count towards continuing education.
- (4) Specialty training, except if completed through a challenge test, may be used to meet continuing education requirements.
- (5) When hours from a class approved as specialty training are counted toward basic training requirements, the hours must not be counted toward continuing education.
- (6) Residential care administrator training under WAC 388-112A-0800 may be used to meet the continuing education requirements described in WAC 388-112A-0610 during the year it was completed.
- (7) Successful completion of a department of health approved home care aide certified alternative bridge program may be applied up to twelve hours of continuing education in the year it was completed.

NEW SECTION

WAC 388-112A-0610 Who is required to complete continuing education training each year, how many hours of continuing education are required, and when must they be completed? (1) Adult family homes.

- (a) Certified home care aides must complete twelve hours of continuing education by their birthday each year after obtaining certification as required by the Washington department of health as described in RCW 74.39A.341.
- (b) If exempt from certification as described in RCW 18.88B.041, long-term care workers must complete twelve hours of continuing education by their birthday each year.
- (i) Unless voluntarily certified as a home care aide under chapter 18.88B RCW, the continuing education does not apply to registered nurses and licensed practical nurses licensed under chapter 18.79 RCW.
- (ii) Continuing education requirements under subsection (1)(b) of this section do not apply to certified nursing assistants and persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010.
- (c) For long-term care workers that are certified as a home care aide or nursing assistant, if the first renewal period is less than a full year from the initial date of certification, no continuing education will be due for the first renewal period.
- (d) Continuing education must include one half hour per year on safe food handling in adult family homes as described in RCW 70.128.250 when the long-term worker does not maintain a food handler's permit.

(2) Assisted living facilities.

- (a) Certified home care aides must complete twelve hours of continuing education by their birthday each year after obtaining certification as required by the Washington department of health as described in RCW 74.39A.341.

(b) Long-term care workers exempt from certification under RCW 18.88B.041 must complete twelve hours of continuing education by their birthday each year.

(c) For long-term care workers that are certified as a home care aide or nursing assistant, if the first renewal period is less than a full year from the initial date of certification, no continuing education will be due for the first renewal period.

(i) Unless voluntarily certified as a home care aide under chapter 18.88B RCW, the continuing education does not apply to registered nurses and licensed practical nurses licensed under chapter 18.79 RCW.

(ii) Continuing education requirements under subsection (2)(b) of this section apply to certified nursing assistants and persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010.

(iii) Assisted living facility administrators or the administrator designees must complete twelve hours of continuing education by their birthday each year.

(3) Enhanced services facilities.

(a) Certified home care aides must complete twelve hours of continuing education by their birthday each year after obtaining certification as required by the Washington department of health as described in RCW 74.39A.341.

(b) Long-term care workers exempt from certification under RCW 18.88B.041 must complete twelve hours of continuing education by their birthday each year for each year they worked.

(c) For long-term care workers that are certified as a home care aide or nursing assistant, if the first renewal period is less than a full year from the initial date of certification, no continuing education will be due for the first renewal period.

(i) Unless voluntarily certified as a home care aide under chapter 18.88B RCW, the continuing education does not apply to registered nurses and licensed practical nurses licensed under chapter 18.79 RCW.

(ii) Continuing education requirements under subsection (3)(b) of this section do apply to certified nursing assistants and persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010.

(iii) Enhanced services facility administrators or the administrator designees must complete twelve hours of continuing education by their birthday each year.

(d) Enhanced services facility certified home care aide staff and nursing assistant certified staff must have ten of their twelve hours of annual continuing education cover relevant education regarding the population served in the enhanced services facility as provided in WAC 388-107-0660.

(e) In addition to the annual continuing education requirements for individual staff, the enhanced services facility must provide three hours of staff education per quarter relevant to the needs of the population served.

(4) A long-term care worker who does not complete continuing education as required in subsections (1) through (3) of this section or RCW 74.39A.341 must not be paid to provide care until they complete the required continuing education.

(5) One hour of completed classroom instruction or other form of training (such as an online course) equals one hour of continuing education. For online courses, the training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-112A-0620 What are the documentation requirements for continuing education? (1) The adult family home, enhanced services facility, or assisted living facility must maintain written documentation of department approved continuing education in the form of a certificate or transcript that contains the following information:

- (a) The name of the student;
 - (b) The title of the training;
 - (c) The number of hours of the training;
 - (d) The assigned curriculum approval code;
 - (e) The instructor's name and signature;
 - (f) The name and identification number of the home or training entity giving the training; and
 - (g) The date(s) of the training.
- (2) The instructor or training program must give the student an original certificate or other documentation of continuing education. The adult family home, enhanced services facility, or assisted living facility must keep a copy of the certificate or transcript on file as described in WAC 388-76-10198 for adult family homes, WAC 388-107-0630 for enhanced services facilities, and WAC 388-78A-2450 for assisted living facilities.

SECTION VII—CPR AND FIRST AID TRAINING

NEW SECTION

WAC 388-112A-0700 What is CPR training? Cardio-pulmonary resuscitation (CPR) training is training provided by an authorized CPR instructor. Trainees must successfully complete the written and skills demonstration tests.

NEW SECTION

WAC 388-112A-0710 What is CPR/first aid training? CPR/first aid training is training that meets the guidelines established by the Occupational Safety and Health Administration (OSHA). Under OSHA guidelines, training must include hands on skills development through the use of mannequins or trainee partners.

NEW SECTION

WAC 388-112A-0720 What are the CPR and first aid training requirements? (1) **Adult family homes.**

(a) Adult family home applicants, providers, entity representatives, and resident managers must have and maintain a valid CPR and first aid card or certificate before they obtain a license.

(b) Licensed nurses who work in adult family homes must have and maintain a valid CPR card or certificate within thirty days of their date of hire. If the licensed nurse is an adult family home provider or resident manager, they must

obtain the valid CPR card or certificate prior to providing care for residents.

(c) Adult family home long-term care workers must obtain and maintain a valid CPR and first aid card or certificate as follows:

(i) Within thirty days of beginning to provide care for residents if directly supervised by a fully qualified long-term care worker with a valid first aid and CPR card or certificate; or

(ii) Before providing care for residents, if not directly supervised by a fully qualified long-term care worker with a valid first aid and CPR card or certificate.

(d) The form of the first aid or CPR card or certificate may be electronic or printed.

(2) Assisted living facilities.

(a) Assisted living facility administrators who provide direct care and long-term care workers must have and maintain a valid CPR and first aid card or certificate within thirty days of their date of hire.

(b) Licensed nurses working in assisted living facility must have and maintain a valid CPR card or certificate within thirty days of their date of hire.

(c) The form of the first aid or CPR card or certificate may be electronic or printed.

(3) Enhanced services facilities.

(a) Enhanced services facility administrators and long-term care workers who provide direct care must have and maintain a valid CPR and first aid card or certificate within thirty days of their date of hire.

(b) Licensed nurses working in an enhanced services facility must have and maintain a valid CPR card or certificate within thirty days of their date of hire.

(c) The form of the first aid or CPR card or certificate may be electronic or printed.

SECTION VIII—RESIDENTIAL CARE ADMINISTRATOR TRAINING

NEW SECTION

WAC 388-112A-0800 What is residential care administrator training? (1) Residential care administrator training is specific training on the administration of the care and services required to obtain a license or manage a facility. The training covers the facility specific Washington state statutes and administrative rules related to the operation of a long-term care facility.

(2) Adult family home (AFH) administrator training.

(a) AFH administrator training is a minimum of fifty-four hours of training on topics related to the management and licensing requirements of adult family homes described in chapter 388-76 WAC.

(b) DSHS must approve AFH administrator training curricula, instructors, and training programs in a community college setting.

(3) Assisted living facility (ALF) administrator training.

(a) ALF administrator training curricula must be based on the requirements described in chapter 388-78A WAC.

(b) DSHS will work with stakeholders to develop, update, and approve ALF administrator training curricula, instructors, and training programs.

(4) Enhanced services facility (ESF) administrator training.

(a) An ESF administrator must complete:

(i) All training as required under this chapter and chapter 388-107 WAC; and

(ii) When available, ESF administrator training developed by the department.

(b) DSHS must approve ESF administrator training, instructors, and training programs.

NEW SECTION

WAC 388-112A-0810 Who must take the adult family home administrator training? New applicants for an adult family home (AFH) license must successfully complete the DSHS developed adult family home administrator training from colleges contracted with the department.

NEW SECTION

WAC 388-112A-0820 What knowledge and skills must adult family home administrator training include? At a minimum, adult family home (AFH) administrator training must include fifty-four hours of class time and all of the following subjects:

- (1) Business planning and marketing;
- (2) Fiscal planning and management;
- (3) Human resource planning;
- (4) Identifying resident health issues;
- (5) Person centered planning;
- (6) Negotiated care planning;
- (7) Emergency and disaster planning;
- (8) Nutrition and food service;
- (9) Working with people who are elderly, chronically mentally ill, or developmentally disabled;
- (10) The licensing process;
- (11) Social and recreational activities;
- (12) Resident rights;
- (13) Legal issues;
- (14) Physical maintenance and fire safety; and
- (15) Housekeeping.

NEW SECTION

WAC 388-112A-0830 Is competency testing required for adult family home administrator training? Competency testing is required for adult family home administrator training.

NEW SECTION

WAC 388-112A-0840 What documentation is required for adult family home administrator training?

(1) Adult family home administrator training must be documented by a department certificate of successful completion of training, issued by the instructor or training entity. The certificate must include the following:

(a) The trainee's name;

- (b) The name of the training;
- (c) The name and department number of the training entity giving the training;
- (d) The instructor's name and signature; and
- (e) The date(s) of training.

(2) The instructor or training program must give the trainee an original certificate. The adult family home must maintain a copy of the certificate in its files.

SECTION IX—COMPETENCY TESTING

NEW SECTION

WAC 388-112A-0900 What is competency testing?

(1) Competency testing, including challenge testing, is evaluating a trainee to determine if they can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning outcomes of a particular course.

(2) Competency and challenge tests are DSHS developed.

(3) DSHS distributes the competency and challenge tests to the training entities when the entities are approved for the applicable course.

NEW SECTION

WAC 388-112A-0910 What components must competency testing include? (1) Competency testing must include the following components:

(a) Skills demonstration except as provided in (b) of this sub-section on the ability to perform and implement specific caregiving approaches and activities as appropriate for the training;

(b) Adult family home administrator training does not include a skills demonstration and student's progress and knowledge will be measured by assigned projects, quizzes, a final exam, and other means of measuring competency;

(c) Written evaluation to show the level of comprehension and knowledge of the training's learning objectives; and

(d) A scoring guide for the tester with clearly stated criteria and minimum proficiency standards.

(2) Instructors who conduct competency testing must have experience or training in assessing competencies.

NEW SECTION

WAC 388-112A-0920 What training must include the DSHS developed competency test? The following trainings must include the DSHS developed competency test:

- (1) Dementia specialty training;
- (2) Mental health specialty training;
- (3) Developmental disabilities specialty training;
- (4) Nurse delegation core training;
- (5) Nurse delegation specialized diabetes training; and
- (6) Adult family home administrator training.

NEW SECTION

WAC 388-112A-0930 How must competency test administration be standardized? To standardize compe-

teny test administration, testing must include the following components:

- (1) The person teaching the course must administer or supervise the administration of all testing; and
- (2) The tester must follow DSHS guidelines for:
 - (a) The maximum length of time allowed for testing;
 - (b) The amount and nature of instruction given to students before beginning a test;
 - (c) The amount of assistance to students allowed during testing;
 - (d) The accommodation guidelines for students with disabilities; and
 - (e) Accessibility guidelines for students with limited English proficiency.

NEW SECTION

WAC 388-112A-0940 What form of identification must students provide before they take a competency or challenge test? Students must provide photo identification before they take a competency or challenge test for basic, specialty, adult family home administrator, and nurse delegation training.

NEW SECTION

WAC 388-112A-0950 How many times may a competency test be taken? (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must retake the course before any additional tests are administered.

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

SECTION X—CURRICULUM APPROVAL

NEW SECTION

WAC 388-112A-1000 Which trainings require department approval of the curriculum and instructor?

(1) Except for facility orientation training under WAC 388-112A-0200(1), the department must preapprove the curriculum, including delivery mode, and instructors for all training required under this chapter.

(2) The following trainings must use only DSHS curriculum:

- (a) Nurse delegation core and specialized diabetes nurse delegation training;
 - (b) Adult family home administrator training; and
 - (c) Developmental disabilities specialty training.
- (3) The department's approval will be based on curriculum review as described in WAC 388-112A-1010.

(4) The department will approve adult family home, enhanced services facilities, and assisted living facility training programs and instructors for orientation and safety training under WAC 388-112A-0200(2) and 388-112A-0220 when the home is licensed. The facility training program may make changes to its training program as described in WAC 388-112A-1210.

NEW SECTION

WAC 388-112A-1010 What is the curriculum approval process for orientation, safety training, basic training, population specific training, specialty training, residential care administrator training, and continuing education? In order to obtain the department's approval of the curriculum for orientation, safety training, basic training, population specific training, specialty training, residential care administrator training, and continuing education:

(1) Submit the required training application forms and any other materials required for specific curriculum to the department.

(2) After review of the curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum.

(3) If the curriculum is not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review for the curriculum to be approved.

(4) The submitter may then make the requested changes and resubmit the curriculum for review.

(5) If after working with the department, the reasons why the curriculum was not approved cannot be resolved, the submitter may seek a review of the nonapproval decision from the assistant secretary of aging and long-term support administration (AL TSA). The assistant secretary's review decision will be DSHS's final decision. No other administrative review is available to the submitter.

NEW SECTION

WAC 388-112A-1020 What must be submitted to DSHS for curriculum approval? (1) If a training entity modifies a department developed curriculum in any manner, the training entity must submit the curriculum to the department for approval.

(2) **For orientation and safety training:**

(a) Submit an outline of what will be covered in each training offered, like a table of contents or a class syllabus, that shows where the required introductory topics listed in WAC 388-112A-0210 for orientation and WAC 388-112A-0230 for safety training are covered in the training.

(b) Department required orientation and safety training application forms must be submitted to the department at least forty-five days before the training is expected to be offered.

(c) Training cannot be offered before the department approves the curriculum and instructor.

(3) **For continuing education:**

(a) Continuing education curriculum delivery models must only include instructor led, online instructor led (such as a webinar), or online interactive self-paced learning with access to an instructor.

(b) Online classes must adhere to the DSHS online class standards in effect at the time of approval. These online standards are posted on the department's website.

(c) For continuing education classes, submit on a department developed form a summary of the class that includes the topic, a brief description of what the training will cover, a course outline, the number of training hours, and a descrip-

tion of how the training is relevant to the care setting, care needs of residents, or long-term care worker career development.

(d) For online training courses, submit the information requested in (c) of this subsection and a description of how the instructor or training will assess that the students have integrated the information being taught.

(e) Department required continuing education training application forms must be submitted at least forty-five days in advance of the training. The department must approve the curriculum and instructor before the training may be offered.

(4) For core basic training:

(a) If the instructor or training entity uses the DSHS developed revised fundamentals of caregiving learner's guide with enhancements, they must submit the DSHS form with all required information.

(b) If the instructor or training entity does not use a DSHS developed revised fundamentals of caregiving learner's guide with enhancements to teach the seventy-hour long-term care worker basic training, they must submit to DSHS the following for approval:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives described in this chapter are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook, long-term care worker manual, learning activities, audio-visual materials, handouts, and books;

(iii) The table of contents or curriculum outline, including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-112A-0320 (12)(a) and (b) and infection control skills such as hand washing and putting on and taking off gloves;

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) Method of teaching, including learning activities that incorporate adult learning principles;

(C) Methods used to determine whether each long-term care worker understands the materials covered and can demonstrate all skills;

(D) A list of the sources or references that were used to develop the curriculum and if the primary source or reference is not a published citation, the instructor must provide detail on how the content is evidence based;

(E) Description of how the curriculum was designed to accommodate long-term care workers with either limited English proficiency, learning disabilities, or both; and

(F) Description and proof of how input was obtained from consumer and long-term care worker representatives in the development of the curriculum.

(c) Curriculum submitted for the core competency section of basic training, called core basic training, as described in WAC 388-112A-0320, must include how much time students will have to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(d) Entities that submit curriculum for the population specific component of the seventy-hour long-term care worker basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

(5) For specialty training:

(a) For specialty training that is not the DSHS developed curriculum or another department approved specialty training curriculum, submit the required specialty training application form and any additional learning objectives added to the competency and learning objectives checklist, the enhancements that have been added, and additional student materials or handouts.

(b) To be approved, an alternative curriculum must at a minimum include:

(i) All the DSHS published learning outcomes and competencies for the course;

(ii) Printed student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio-visual materials, handouts, and books;

(iii) The recommended sequence and delivery of the material;

(iv) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:

(A) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;

(B) Practice of skills to increase competency;

(C) Feedback to the student on knowledge and skills;

(D) An emphasis on facilitation by the teacher; and

(E) An integration of knowledge and skills from previous lessons to build skills;

(v) A list of the sources or references, if any, used to develop the curriculum;

(vi) Methods of teaching and student evaluation for students with either limited English proficiency, learning disabilities, or both;

(vii) A plan for updating material; and

(6) Substantial changes to a previous approved curriculum must be approved before they are used.

SECTION XI—HOME-BASED TRAINING

NEW SECTION

WAC 388-112A-1100 What are the requirements for an assisted living facility, enhanced services facility, or adult family home to conduct orientation, safety, basic, on-the-job, continuing education, or specialty training?

(1) An assisted living facility, enhanced services facility, or adult family home provider may conduct orientation, safety, basic, on-the-job, continuing education, and specialty trainings if the provider:

(a) Verifies, documents using the department's attestation process, keeps on file, and makes available to the department upon re-request that all instructors meet the minimum instructor qualifications in WAC 388-112A-1230 through 388-112A-1295 for the course they plan to teach;

(b) Teaches using a complete DSHS developed or approved curriculum;

(c) Notifies DSHS in writing of the provider's intent to conduct staff training prior to providing the provider's first training and when changing training plans, including:

- (i) The provider's name;
- (ii) Name of training(s) the provider will conduct;
- (iii) Name of approved curriculum the provider will use;
- (iv) Name of lead instructor and instructor's past employment in assisted living facility or adult family homes; and

(v) Whether the provider will train only the provider's staff or also other providers and if the provider will train staff outside the home or corporation, the instructor must become a DSHS contracted community instructor;

(d) Ensures that DSHS competency tests are administered as required under this chapter and referenced in department instructor guides and instructor policies distributed at the time of course approval;

(e) Provides a certificate or transcript of completion of training to all staff that successfully complete the entire course;

(f) Keeps electronic or paper copies of long-term care worker certificates on file for six years and gives the original certificate to the student;

(g) Reports training data to DSHS when requested by the department;

(2) The department may conduct a random audit at any time to review training and instructor qualifications.

NEW SECTION

WAC 388-112A-1110 When may DSHS prohibit a home from conducting its own training? (1) DSHS may prohibit a home from providing its own seventy-hour long-term care worker basic, specialty, or continuing education training when any one of the following occurs:

(a) DSHS determines that the training fails to meet the standards under this chapter;

(b) The home fails to notify DSHS of a change in curriculum prior to teaching the curriculum;

(c) The home provides false or misleading information to long-term care workers or the public concerning the courses offered or conducted;

(d) The home's instructor fails to meet the applicable qualifications described under this chapter;

(e) The home's instructor has been a licensee, assisted living facility administrator, enhanced services facility administrator, or adult family home resident manager, of any home subject to temporary management, revocation or summary suspension of the home's license, stop placement of admissions order, condition on the license related to resident care, or civil fine of five thousand dollars or more, while the instructor was the licensee, administrator, or resident manager;

(f) The home has been operated under temporary management or has been subject to a revocation or suspension of the home license, stop placement of admissions order, condition on the license related to resident care, or civil fine of five

thousand dollars or more, within the previous eighteen months.

(2) Nothing in this section shall be construed to limit the authority of DSHS under this chapter to require the immediate enforcement, pending any appeal, of a condition on the home license prohibiting the home from conducting its own training programs.

SECTION XII—INSTRUCTOR APPROVAL

NEW SECTION

WAC 388-112A-1200 What are the training entity's responsibilities? The training entity is responsible for:

- (1) Coordinating and teaching classes;
- (2) Assuring that the curriculum used is taught as designed;
- (3) Selecting qualified guest speakers where applicable;
- (4) Establishing a method whereby the long-term care worker can ask the instructor questions;
- (5) Administering or overseeing the administration of DSHS competency and challenge tests;
- (6) Maintaining training records electronically or on paper including long-term care worker certificates and attendance records for a minimum of six years;
- (7) Reporting training data to DSHS when requested by the department; and
- (8) Issuing or reissuing training certificates to long-term care workers.

NEW SECTION

WAC 388-112A-1210 Must training entities and their instructors be approved by DSHS? Training entities and their instructors must be approved by DSHS as follows:

(1) For DSHS contracted training entities:

(a) DSHS must approve or approve and contract with a training entity and its instructor(s) to conduct orientation, safety training, basic training, population specific training, residential care administrator training, specialty training, nurse delegation core and specialized diabetes training, on-the-job training, and continuing education.

(b) DSHS may select training entities using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through the contracting procedure.

(2) Homes that conduct their own training using the training curricula developed by DSHS or another curriculum approved by DSHS must ensure, through an attestation process, that their instructors meet the minimum qualifications for instructors under this chapter.

NEW SECTION

WAC 388-112A-1220 May DSHS deny or terminate a contract or rescind approval of an instructor or training entity? (1) DSHS may deny a person or organization seeking a contract with or approval by DSHS to conduct orientation, continuing education, or safety, basic, population specific, adult family home administrator, specialty, nurse delegation

core, or specialized diabetes training. No administrative remedies are available to dispute DSHS's decision not to contract with or approve a person or organization, except as may be provided through the contracting process.

(2) DSHS may terminate an existing training contract in accordance with the terms of the contract. The contractor's administrative remedies are limited to those specified in the contract.

(3) DSHS may terminate an existing training approval of a person or entity to conduct orientation, continuing education, or safety, basic, population specific, residential care administrator, specialty, nurse delegation core, or diabetes training.

NEW SECTION

WAC 388-112A-1230 What is a guest speaker and what are the minimum qualifications to be a guest speaker? (1) A guest speaker is a person selected by an approved instructor to teach a specific topic. A guest speaker:

(a) May only teach a specific subject in which they has expertise and their background and experience demonstrates expertise on the topic they will teach.

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the primary instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic the guest speaker is teaching.

(2) The approved instructor:

(a) Must select a guest speaker based on his or her knowledge and experience in the specific topic;

(b) Maintain documentation of the guest speaker's qualifications and experience;

(c) Supervise and monitor the guest speaker's performance; and

(d) Is responsible for insuring the required content is taught.

(3) DSHS does not approve guest speakers.

NEW SECTION

WAC 388-112A-1240 What are the minimum qualifications for an instructor for core basic, population specific, on-the-job, residential care administrator, nurse delegation core, and specialized diabetes trainings? An instructor for core basic, population specific, on-the-job, residential care administrator, nurse delegation core, and nurse delegation specialized diabetes trainings must meet the following minimum qualifications:

(1) Twenty-one years of age;

(2) Has not had a professional health care, adult family home, assisted living facility, or social services license or certification revoked in Washington state; and

(3) Meets one or more of the following education or work experience requirements upon initial approval or hire:

(a) Is a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting;

(b) Has an associate degree or higher degree in the field of health or human services and six months professional or caregiving experience within the last five years in a commu-

nity based setting or an adult family home, enhanced services facility, assisted living facility, supported living through the developmental disabilities administration (DDA), or home care setting;

(c) Has a high school diploma or equivalent and one year of professional or caregiving experience within the last five years in an adult family home, enhanced services facility, assisted living, supported living through DDA, or home care setting;

(4) Meets one or more of the following teaching experience requirements:

(a) One hundred hours of experience teaching adults in an appropriate setting on topics directly related to basic training or basic training topics that may be offered as continuing education;

(b) Forty hours of teaching basic training while being mentored by an instructor who is approved to teach basic training;

(c) Instructors with adult family homes, enhanced services facilities, and assisted living facilities that do not meet the criteria in (a) or (b) of this subsection, must have and attest to the following experience in their application:

(i) Forty hours of informal teaching experiences unrelated to basic training topics such as guest lecturing, team teaching, and volunteer teaching with parks, local high schools, 4-H groups, English as a second language (ESL) groups, senior organizations, and religious organizations;

(ii) Three adult learning techniques that the instructor will implement in his or her long-term care worker training; and

(iii) Three ways the instructor plans on improving his or her instructional facilitation and the method the instructor will use to measure improvement such as submitting the continuous improvement plan feedback from the DSHS adult education class;

(5) Except for instructors for nurse delegation core and diabetes training, completion of a class on adult education that meets the requirements of WAC 388-112A-1297;

(6) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to teaching the course content or units taught;

(7) Instructors who will administer tests must have experience or training in assessment and competency testing;

(8) Community instructors for nurse delegation core and diabetes training must have a current Washington registered nurse (RN) license in good standing without practice restrictions;

(9) Facility instructors must be approved and contracted by the department as a community instructor in order to be approved to teach the following classes:

(a) Nurse delegation core;

(b) Nurse delegation diabetes training; or

(c) DSHS adult education training curriculum.

NEW SECTION

WAC 388-112A-1250 What are the minimum qualifications for community instructors for adult education training using DSHS curriculum? (1) The minimum qualifications for community instructors of adult education train-

ing using DSHS curriculum, in addition to the general qualifications in WAC 388-112A-1240 (1) and (2), include:

(a) The instructor must be experienced in adult education practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Has a bachelor's degree or is a registered nurse with at least one year of education in seminars, conferences, continuing education, or in college classes in subjects directly related to adult education, such as, but not limited to English as a second language (ESL), adult basic education, and adult secondary education (one year of education equals twenty-four semester credits in a semester system, thirty-six quarter credits in a quarter system, or at least eighty hours of seminars, conferences, and continuing education); and

(ii) Successful completion of the DSHS adult education training curriculum prior to beginning to train others;

(c) Meets one or more of the following teaching experience requirements:

(i) Two years experience teaching long-term care workers; or

(ii) Two hundred hours experience teaching adult education or closely related subjects;

(d) Successful completion of the DSHS instructor qualification/demonstration process; and

(e) Instructor approved and contracted by the department as a community instructor.

(2) Instructors that administer tests must have experience or training in assessment and competency testing.

NEW SECTION

WAC 388-112A-1260 What are the minimum qualifications for an instructor for orientation, safety training, and continuing education? (1) An instructor for orientation and safety training, must be a registered nurse or other person with specific knowledge, training, and work experience relevant to the topics required in orientation and safety training. Facility training programs and their orientation and safety training instructors will be approved at the time of the facility licensing as provided in WAC 388-112A-1000(4).

(2) An instructor for continuing education must be a registered nurse or other person that is proficient in the content they cover in the course or have specific knowledge, training, or experience in the provision of direct, personal care, or other relevant services to the elderly or persons with disabilities requiring long-term care.

NEW SECTION

WAC 388-112A-1270 What are the minimum qualifications for community instructors for mental health specialty training? (1) The minimum qualifications for community instructors for mental health specialty training, in addition to the general qualifications in WAC 388-112A-1240 (1) and (2), include:

(a) The instructor must be experienced in mental health caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education, or accredited college classes, in subjects directly related to mental health, including, but not limited to, psychology (one year of education equals twenty-four credits in a semester system, thirty-six credits in a quarter system, or at least eighty hours of seminars, conferences, and continuing education); and

(ii) Successful completion of the mental health specialty training class before the instructor trains others;

(c) Work experience: Two years full-time equivalent direct work experience with people who have a mental illness; and

(d) Teaching experience:

(i) Two hundred hours experience teaching long-term care related subjects;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor;

(e) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(2) Five years of full-time equivalent direct work experience with people who have a mental illness may substitute for either:

(a) The credential described in subsection (1)(b)(i) of this section; or

(b) The one year of education in college classes or eighty hours in seminars, conferences, continuing education described in subsection (1)(b)(ii).

(3) If your status is an approved instructor for mental health specialty training, you may instruct a new mental health specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

NEW SECTION

WAC 388-112A-1280 What are the minimum qualifications for facility training program instructors for mental health specialty training? (1) The minimum qualifications for facility instructors to teach mental health specialty training is to meet the requirements in WAC 388-112A-1240. The facility instructor must submit an application attesting to those qualifications and submit copies of certificates of completion for the mental health specialty training curriculum they would like to teach and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

(a) Facility instructors must be approved prior to teaching the class.

(b) A qualified instructor under this subsection may teach specialty training to long-term care workers employed at other homes licensed by the same licensee.

(2) If your status is an approved instructor for mental health specialty training, you may instruct a new mental

health specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

NEW SECTION

WAC 388-112A-1285 What are the minimum qualifications for community instructors for dementia specialty training? (1) The minimum qualifications for instructors for dementia specialty, in addition to the general qualifications defined in WAC 388-112A-1240 (1) and (2) include:

(a) The instructor must be experienced in dementia caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education or college classes, in dementia or subjects directly related to dementia, such as, but not limited to, psychology (one year of education equals twenty-four credits in a semester system, thirty-six credits in a quarter system, or at least eighty hours of seminars, conferences, or continuing education); and

(ii) Successful completion of the dementia specialty training, prior to beginning to train others;

(c) Work experience: Two years full-time equivalent direct work experience with people who have dementia;

(d) Teaching experience:

(i) Two hundred hours experience teaching long-term care related subjects;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor;

(e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Five years of full-time equivalent direct work experience with people who have dementia may substitute for either:

(a) The credential (bachelor's degree, registered nurse, or mental health specialist) described in subsection (1)(b)(i) of this section; or

(b) The one year of education in college classes or eighty hours in seminars, conferences, continuing education described in subsection (1)(b)(ii) of this section.

(3) If your status is an approved instructor for dementia specialty training, you may instruct a new dementia specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

NEW SECTION

WAC 388-112A-1290 What are the minimum qualifications for facility training program instructors for dementia specialty training? (1) The minimum qualifica-

tions for facility instructors to teach dementia specialty training is to meet the requirements in WAC 388-112A-1240. The facility instructor must submit an application attesting to those qualifications and submit copies of certificates of completion for the dementia specialty training curriculum they would like to teach and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

(a) Facility instructors must be approved prior to teaching the class.

(b) A qualified instructor under this section may teach specialty training to long-term care workers employed at other home(s) licensed by the same licensee.

(2) If your status is an approved instructor for dementia specialty training, you may instruct a new dementia specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

NEW SECTION

WAC 388-112A-1295 What are the minimum qualifications for instructors for developmental disabilities specialty training? (1) Instructors for developmental disabilities specialty training must meet the minimum qualifications in WAC 388-112A-1240 (1) and (2) and the following minimum qualifications:

(a) The instructor must be experienced in developmental disabilities caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education and work experience:

(i) Bachelor's degree with at least two years of full-time work experience in the field of disabilities; or

(ii) High school diploma or equivalent, with four years full-time work experience in the field of developmental disabilities, including two years full-time direct work experience with people who have a developmental disability;

(c) Successful completion of the developmental disabilities specialty training under WAC 388-112A-0420;

(d) Teaching experience:

(i) Two hundred hours of teaching experience;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297; and

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(e) Has been approved and contracted by the department as a community instructor.

(2) Instructors who will administer tests must have experience in assessment and competency testing.

(3) Developmental disabilities specialty training may be taught by an assisted living facility administrator or designee, enhanced services facility administrator or designee, adult family home provider or designee, or corporate trainer, who has successfully completed the following:

(a) Developmental disabilities specialty training under WAC 388-112A-0420;

(b) DSHS instructor qualification/demonstration process; and

(c) Adult education class that meets the requirements of WAC 388-112A-1297.

(4) A qualified instructor under this section may teach developmental disabilities specialty training to long-term care workers employed at other homes licensed by the same licensee.

NEW SECTION

WAC 388-112A-1297 What must be included in an adult education class and which instructors must complete it? (1) A class on adult education must include content, student practice, and evaluation of student skills by the instructor in:

- (a) Adult education theory and practice principles;
 - (b) Instructor facilitation techniques;
 - (c) Facilitating learning activities for adults;
 - (d) Administering competency testing and assessment;
- and

(e) Working with adults with special training needs like limited English proficiency, learning disabilities, or both.

(2) Instructors who request approval to teach core basic, population specific, on-the-job, residential care administrator, and specialty trainings must complete the DSHS adult education class or an adult education class that meets the criteria in subsection (1) of this section and provide a copy of the certificate of completion.

SECTION XIII—PHYSICAL RESOURCES AND STANDARD PRACTICES FOR TRAINING

NEW SECTION

WAC 388-112A-1300 What physical resources are required for classroom training and testing? (1) The training entity must provide accessible classroom facilities to students and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning such as white boards and flip charts. The training entity must maintain appropriate supplies and equipment for teaching and practice of caregiving skills in the class being taught.

(2) The training entity must provide testing sites with adequate space for testing, comfort, lighting, and lack of disturbance appropriate for the written or skills test being conducted. The training entity must maintain appropriate supplies and equipment necessary for the particular test.

NEW SECTION

WAC 388-112A-1310 The training entity must maintain standard training practices for classroom training and testing. The training entity must maintain the following training standards for classroom training and testing:

- (1) Training must not exceed eight hours within one day;
- (2) Training provided in short time segments must include an entire unit, skill, or concept;
- (3) Training must include regular breaks; and
- (4) Long-term care workers attending a classroom training must not be expected to leave the class to attend to job duties, except in an emergency.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-112-0001 What are the purposes of this chapter?
- WAC 388-112-0002 To whom do the training requirements apply?
- WAC 388-112-0003 What are the training and certification requirements for volunteers and long-term care workers in adult family homes and assisted living facilities, adult family home providers, assisted living facility administrators and adult family home applicants?
- WAC 388-112-0004 What action(s) may the department take for provider noncompliance with the requirements of this chapter?
- WAC 388-112-0005 What definitions apply to this chapter?
- WAC 388-112-0010 When do the training requirements go into effect?
- WAC 388-112-0015 What is orientation training, who should complete it, and when should it be completed?
- WAC 388-112-0016 What content must be included in long-term care worker orientation?
- WAC 388-112-0018 What is safety training, who must complete it and when should it be completed?
- WAC 388-112-0019 What content must be included in safety training?
- WAC 388-112-0035 What documentation is required for facility orientation training?
- WAC 388-112-0045 What is basic training?
- WAC 388-112-0053 What topics must be taught in the core competencies of basic training for long-term care workers?
- WAC 388-112-0055 What are the core competencies and learning objectives for long-term care worker basic training?
- WAC 388-112-0062 What is on-the-job training?
- WAC 388-112-0066 What is the population specific component of basic training?
- WAC 388-112-0070 What documentation is required to show completion of the seventy hour basic, and five hour orientation and safety training?

- WAC 388-112-0075 Who is required to complete basic training, and when, unless exempt as described in WAC 388-112-0076?
- WAC 388-112-0076 Which long-term care workers are exempt from the basic training requirement?
- WAC 388-112-0078 What other required training may be used to satisfy the population specific component of the basic training?
- WAC 388-112-0079 What are the requirements for using basic training to meet the specialty training requirements?
- WAC 388-112-0081 What topics may the training on young adults with physical disabilities include?
- WAC 388-112-0083 What are some examples of the competencies and learning objectives for the training on young adults with physical disabilities?
- WAC 388-112-0088 What topics may the training on aging and older adults include?
- WAC 388-112-0091 What are some examples of competencies and learning objectives for training on aging and older adults?
- WAC 388-112-0092 What learning objectives may be included in the curriculum for young adults with physical disabilities and/or for aging and older adults?
- WAC 388-112-0106 Who is required to obtain certification as a home care aide, and when?
- WAC 388-112-0108 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification?
- WAC 388-112-0110 What is specialty training and who is required to take specialty training?
- WAC 388-112-0115 What specialty training is required if a resident has more than one special need?
- WAC 388-112-0120 What topics must developmental disabilities specialty trainings include?
- WAC 388-112-0122 What are the competencies and learning objectives for the long-term care worker developmental disability specialty training?
- WAC 388-112-0125 What knowledge and skills must manager dementia specialty training include?
- WAC 388-112-0130 What topics must long-term care worker dementia specialty training include?
- WAC 388-112-0132 What are the competencies and learning objectives for the long-term care worker dementia specialty training?
- WAC 388-112-0135 What knowledge and skills must manager mental health specialty training include?
- WAC 388-112-0140 What topics must the long-term care worker mental health specialty training include?
- WAC 388-112-0142 What are the competencies and learning objectives for the long-term care worker mental health specialty training?
- WAC 388-112-0145 Who is required to complete competency testing for specialty training?
- WAC 388-112-0150 Is there a challenge test for specialty training (including the manager and long-term care worker specialty trainings)?
- WAC 388-112-0152 Is competency testing required for population specific trainings on young adults with physical disabilities, or aging and older adults?
- WAC 388-112-0155 What documentation is required for successful completion of specialty training?
- WAC 388-112-0160 Who is required to complete manager specialty training, or eighteen hour developmental disability caregiver training, and when?
- WAC 388-112-0165 Who is required to complete specialty training, and when?
- WAC 388-112-0170 What is nurse delegation core training?
- WAC 388-112-0175 What knowledge and skills must nurse delegation core training include?
- WAC 388-112-0180 Is competency testing required for nurse delegation core training?
- WAC 388-112-0185 Is there a challenge test for nurse delegation core training?
- WAC 388-112-0190 What documentation is required for successful completion of nurse delegation core training?

- WAC 388-112-0195 Who is required to complete nurse delegation core training and nurse delegation specialized diabetes training, and when?
- WAC 388-112-0196 What is specialized diabetes nurse delegation training?
- WAC 388-112-01961 What knowledge and skills must specialized diabetes nurse delegation training include?
- WAC 388-112-01962 Is competency testing required for the specialized diabetes nurse delegation training?
- WAC 388-112-01963 Is there a challenge test for specialized diabetes nurse delegation training?
- WAC 388-112-01964 What documentation is required for successful completion of specialized diabetes nurse delegation training?
- WAC 388-112-0197 Can nurse delegation core and specialized diabetes training occur in the same year as basic training?
- WAC 388-112-0200 What is continuing education?
- WAC 388-112-0205 Who is required to complete continuing education training, and how many hours of continuing education are required each year?
- WAC 388-112-0207 When must a long-term care worker complete continuing education?
- WAC 388-112-0210 What topics may be covered in continuing education?
- WAC 388-112-0225 May specialty training be used to meet continuing education requirements?
- WAC 388-112-0235 May residential care administrator training be used to meet continuing education requirements?
- WAC 388-112-0240 What are the documentation requirements for continuing education?
- WAC 388-112-0250 What is CPR training?
- WAC 388-112-0255 What is CPR/first-aid training?
- WAC 388-112-0260 What are the CPR and first-aid training requirements?
- WAC 388-112-0265 What is residential care administrator training?
- WAC 388-112-0270 Who must take the adult family home residential care administrator training and when?
- WAC 388-112-0275 What knowledge and skills must residential care administrator training include?
- WAC 388-112-0280 Is competency testing required for adult family home residential care administrator training?
- WAC 388-112-0285 What documentation is required for residential care administrator training?
- WAC 388-112-0290 What is competency testing?
- WAC 388-112-0295 What components must competency testing include?
- WAC 388-112-0300 What training must include the DSHS-developed competency test?
- WAC 388-112-0305 How must competency test administration be standardized?
- WAC 388-112-0310 What form of identification must students provide before taking a competency or challenge test?
- WAC 388-112-0315 How many times may a competency test be taken?
- WAC 388-112-0320 Which trainings require department approval of the curriculum and instructor?
- WAC 388-112-0325 What must be submitted to DSHS for curriculum approval?
- WAC 388-112-0330 What is the curriculum approval process for orientation, safety, basic training (core and population specific training), and continuing education?
- WAC 388-112-0335 What are the requirements for an assisted living facility or adult family home to conduct orientation, safety, basic, on-the-job training, continuing education, or long-term care worker specialty training?
- WAC 388-112-0345 When can DSHS prohibit a home from conducting its own training?
- WAC 388-112-0355 What are the training entity's responsibilities?
- WAC 388-112-0360 Must training entities and their instructors be approved by DSHS?
- WAC 388-112-0365 Can DSHS deny or terminate a contract or rescind approval of an instructor or training entity?
- WAC 388-112-0370 What is a guest speaker, and what are the minimum qualifications to be a guest speaker?

- WAC 388-112-0380 What are the minimum qualifications for an instructor for basic, population specific, on-the-job training, residential care administrator, and nurse delegation core and specialized diabetes training?
- WAC 388-112-0383 What are the minimum qualifications for an instructor for orientation, safety, and continuing education?
- WAC 388-112-0385 What are the minimum qualifications for instructors for manager and long-term care worker mental health specialty training?
- WAC 388-112-0390 What are the minimum qualifications for instructors for manager and long-term care worker dementia specialty?
- WAC 388-112-0395 What are the minimum qualifications for instructors for manager and long-term care worker developmental disabilities specialty?
- WAC 388-112-0400 What must be included in a class on adult education?
- WAC 388-112-0405 What physical resources are required for classroom training and testing?
- WAC 388-112-0410 What standard training practices must be maintained for classroom training and testing?

525, 388-96-542, 388-96-554, 388-96-556, 388-96-560, 388-96-580, 388-96-585, 388-96-710, 388-96-713, 388-96-758, 388-96-759, 388-96-781, 388-96-782, and 388-96-901.

Statutory Authority for Adoption: RCW 74.46.800, 74.46.561(1).

Adopted under notice filed as WSR 17-08-070 on April 3, 2017.

Changes Other than Editing from Proposed to Adopted Version: Updated licensed beds definition with a specific date for determining number of licensed beds, joint cost allocation disclosure requirement language was removed, language was added stating that expensed equipment needs a useful life of one year or more, restored references to goodwill, language regarding settlements was changed to address concerns, capital lease definition was restored.

A final cost-benefit analysis is available by contacting Elizabeth Pashley, 4450 10th Avenue S.E., Lacey, WA 98503, phone 360-725-2447, fax 360-725-2641, TTY 360-493-2637, email Elizabeth.Pashley@dshs.wa.gov.

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 24, Repealed 24.

Number of Sections Adopted at the Request of a Non-governmental 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 24, Repealed 24.

Date Adopted: October 20, 2017.

Cheryl Strange
Secretary

WSR 17-22-037

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 24, 2017, 11:29 a.m., effective November 24, 2017]

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

Purpose: The department is amending chapter 388-96 WAC in order to implement the nursing facility methodology changes from SHB 1274 found in chapter 2, Laws of 2015 2nd sp. sess., and SHB 2678, chapter 131, Laws of 2016 regular session. This permanent rule filing cancels and supercedes the emergency filed as WSR 17-22-012 on October 19, 2017.

Citation of Rules Affected by this Order: New WAC 388-96-915, 388-96-916 and 388-96-917; and repealing WAC 388-96-534, 388-96-540, 388-96-552, 388-96-553, 388-96-558, 388-96-559, 388-96-561, 388-96-562, 388-96-564, 388-96-565, 388-96-572, 388-96-574, 388-96-708, 388-96-709, 388-96-744, 388-96-746, 388-96-747, 388-96-748, 388-96-762, 388-96-767, 388-96-776, 388-96-783, 388-96-784 and 388-96-786; and amending WAC 388-96-010, 388-96-022, 388-96-107, 388-96-122, 388-96-205, 388-96-208, 388-96-211, 388-96-218, 388-96-502, 388-96-505, 388-96-

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-010 Definitions. Unless the context indicates otherwise, the following definitions apply in this chapter.

"Accounting" means activities providing information, usually quantitative and often expressed in monetary units, for:

- (1) Decision making;
- (2) Planning;
- (3) Evaluating performance;
- (4) Controlling resources and operations; and
- (5) External financial reporting to investors, creditors, regulatory authorities, and the public.

"Accrual method of accounting" is a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

"Administration and management" means activities used to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

"Allowable costs" are documented costs that are necessary, ordinary, reasonable, and related to the care of medicaid recipients, and are not expressly declared nonallowable by this chapter or chapter 74.46 RCW. Costs are ordinary if they are of the nature and magnitude that prudent and cost conscious management would pay.

~~("Allowable depreciation costs" are depreciation costs of tangible assets, whether owned or leased by the contractor, meeting the criteria specified in WAC 388-96-552.)~~

"Assignment of contract" means:

- (1) A new nursing facility licensee has elected to care for medicaid residents;
- (2) The department finds no good cause to object to continuing the medicaid contract at the facility; and
- (3) The new licensee accepts assignment of the immediately preceding contractor's contract at the facility.

"Bad debts" are amounts considered to be uncollectible from accounts and notes receivable.

"Banked beds" are beds removed from service under chapter 246-310 WAC.

"Beneficial owner" is any one or more of the following:

- (1) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares one or more of the following:
 - (a) Voting power which includes the power to vote, or to direct the voting of such ownership interest; ~~((and))~~ or
 - (b) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.
- (2) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the ~~((purpose of))~~ effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;
- (3) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:
 - (a) Through the exercise of any option, warrant, or right;
 - (b) Through the conversation of an ownership interest;
 - (c) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or
 - (d) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement; except that, any person who acquires an ownership interest or power specified in ~~((3))~~(a), (b), or (c) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;
- (4) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such

pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(a) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(b) The pledgee agreement, prior to default, does not grant to the pledgee:

- (i) The power to vote or to direct the vote of the pledged ownership interest; or
- (ii) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

"Building" means the basic structure, shell, structures, or shells of a facility and additions thereto. All allowable sections of a building are enclosed on all sides with a roof and are permanent.

"Building improvements" are betterments and additions made by a building owner to the building.

"Capital" means the component of the rate that uses a fair market rental system to set a price per bed.

"Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.

"Cash method of accounting" means a method of accounting in which revenues are recorded when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

"Change of ownership" means a substitution, elimination, or withdrawal of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility.

(1) Events which constitute a change of ownership include, but are not limited to, the following:

- (a) Changing the form of legal organization of the contractor, ~~((e.g.))~~ such as a sole proprietor forms a partnership or corporation;
- (b) Transferring ownership of the nursing facility business enterprise to another party, regardless of whether ownership of some or all of the real property ~~((and/or))~~ or personal property assets of the facility are also transferred;
- (c) Dissolving of a partnership;
- (d) Dissolving the corporation, merging the corporation with another corporation, which is the survivor, or consolidating with one or more other corporations to form a new corporation;
- (e) Transferring, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock to one or more:
 - (i) New or former stockholders; or

(ii) Present stockholders each having held less than five percent of the stock before the initial transaction;

(f) Substituting of the individual operator or the operating entity by any other event or combination of events that results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services; or

(g) A nursing facility ceases to operate.

(2) Ownership does not change when the following, without more, occurs:

(a) A party contracts with the contractor to manage the nursing facility enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(b) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

"Charity allowance" means a reduction in charges made by the contractor because of the indigence or medical indigence of a patient.

"Component rate allocation((+))" means the initial component rate allocation((+)) of the rebased rate for a rebase period effective July ((+)) 1st. If a month and a day, other than July ((+)) 1st with a year precedes "component rate allocation((+))," it means the initial component rate allocation((+)) of the rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"Contract" means an agreement between the department and a contractor for the delivery of nursing facility services to medical care recipients.

"Cost report" means all schedules of a nursing facility's cost report submitted according to the department's instructions.

"Courtesy allowances" are reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

"Department" means department of social and health services and its employees.

"Direct care supplies ((+DCS)) are those supplies)) or "DCS" means:

(1) Those supplies:

(a) Used by staff providing direct care to residents;

((+)) (b) Consumed during a single accounting period; and

((+)) (c) Expensed in that accounting period.

(2) Supplies excluded from DCS include but are not limited to the following:

((+)) (a) Medical equipment (such as IV poles);

((+)) (b) Items covered by medicaid fee-for-service system; and

((+)) (c) Administrative supplies used by direct care staff (such as pencils, pens, paper, and office supplies(, etc)).

"Donated asset" means an asset the contractor acquired without making any payment for the asset either in cash,

property, or services. An asset is not a donated asset if the contractor:

(1) Made even a nominal payment in acquiring the asset; or

(2) Used donated funds to purchase the asset.

~~("Essential community provider" means a facility that is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.)~~

"Equity capital" means total tangible and other assets ~~(which)~~ that are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital defined as current assets minus current liabilities.

"Fiscal year" means the operating or business year of a contractor. All contractors report on the basis of a twelve((-))month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, ~~("fiscal year")~~ "fiscal year" may also refer to a state fiscal year extending from July ((+)) 1st through June ((+)) 30th of the following year and comprising the first or second half of a state fiscal biennium.

"Fixed equipment" means attachments to buildings including, but not limited to, wiring, electrical fixtures, plumbing, elevators, heating system, and air conditioning system. Generally, fixed equipment is permanently attached to the building and not subject to transfer.

~~("Gain on sale" means the actual total sales price of all tangible and intangible nursing facility assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.)~~

"Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

"Imprest fund" means a fund ~~(which)~~ that is regularly replenished in exactly the amount expended from it.

"Intangible asset" is an asset that lacks physical substance but possesses economic value.

"Interest" means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

"Joint facility costs" are any costs that benefit more than one facility, or one facility and any other entity.

~~("Large nonessential community providers" are not essential community providers and have more than sixty licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.)~~

"Leasehold improvements" are betterments and additions made by the lessee to the leased property that become the property of the lessor after the expiration of the lease.

~~("Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.)~~

"Licensed beds" means the adjusted reported beds from the cost report associated with the cost year of the component being set. This is the number of licensed beds in a facility on December 31st of the cost report year according to the department of health.

"Nonadministrative wages and benefits" are wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not ~~((to include))~~ including the administrator, assistant administrator, or administrator-in-training.

"Nonallowable costs" are the same as ~~((**"unallowable costs."**))~~ **"unallowable costs."**

"Nonrestricted funds" are funds that are not restricted to a specific use by the donor, ~~((e.g.,))~~ such as general operating funds.

"Nursing facility occupancy percentage" is a percentage determined by multiplying the number of calendar days for the cost report period by the number of licensed beds, regardless of how many beds are set up, in use, or banked under ~~((chapter 70.38 RCW))~~ chapter 246-310 WAC, for the same cost report period. Then, the product is divided into the nursing facility's actual resident days for the same cost report period. Banked beds are not counted as licensed beds for nursing facility occupancy percentage calculation.

"Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

"Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form ~~((which such))~~ the beneficial ownership takes.

"Per diem ~~((per patient day or per resident day))~~ costs," or "per patient day costs," or "per patient days costs" mean ~~((s))~~ total allowable costs for a fiscal period divided by total patient or resident days for the same period.

"Prospective daily payment rate" means the rate assigned by the department to a contractor for providing service to medical care recipients prior to the application of settlement principles.

"Real property," whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

"Recipient" means a medicaid recipient.

"Related care" means only those services that are directly related to providing direct care to nursing facility residents including but not limited to:

- (1) The director of nursing services;
- (2) Nursing direction and supervision;
- (3) Activities and social services programs;
- (4) Medical and medical records specialists ~~((-))~~; and
- (5) Consultation provided by:
 - (a) Medical directors; and
 - (b) Pharmacists.

"Relative" includes:

- (1) Spouse;
- (2) Natural parent, child, or sibling;
- (3) ~~((Adopted))~~ Adoptive child ~~((or adoptive))~~, parent, or sibling;
- (4) Stepparent, stepchild, stepbrother, stepsister;
- (5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;

(6) Grandparent ~~((or))~~ and grandchild; and

(7) Uncle, aunt, nephew, niece, ~~((or))~~ and cousin.

"Related organization" means an entity ~~((that is))~~ under common ownership ~~((and/or))~~ or common control with, or has control of ~~((s))~~ or is controlled by ~~((s))~~ the contractor.

~~((a))~~ (1) "Common ownership" exists when an entity or person is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

~~((b))~~ (2) "Control" exists where an entity or person has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercised and exercised.

"Renovations" means the cost of the building, building improvements, leasehold improvements, and fixed equipment used to calculate a facility's age. In order to be used to calculate a facility's age, the cost of renovations in a calendar year must be two thousand dollars or greater per licensed bed.

"Restricted fund" means those funds in which either the principal ~~((and/or))~~ or income ~~((of which))~~, or both, is limited by agreement with or direction of the donor to a specific purpose.

"Significant renovations" are renovations that exceed two thousand dollars per licensed bed in a calendar year as reported on the adjusted annual cost report.

~~((**"Small nonessential community providers"** are not essential community providers and have sixty or fewer licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.))~~

"Start up costs" are the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start up costs include:

- (1) Administrative and nursing salaries;
- (2) Utility costs;
- (3) Taxes;
- (4) Insurance;
- (5) Repairs and maintenance; and
- (6) Training costs.

Start up costs do not include expenditures for capital assets.

"Total rate allocation" means the initial rebased rate for a rebase period effective July ~~((+))~~ 1st. If a month and a day, other than July ~~((+))~~ 1st, with a year precedes "total rate allocation," it means the initial rebased rate of the rebase period has been amended or updated effective the date that precedes it, ~~((e.g.,))~~ such as October 1, 1999 direct care component rate allocation.

"Unallowable costs" are costs that do not meet every test of an allowable cost.

"Uniform chart of accounts" are account titles identified by code numbers established by the department for contractors to use in reporting costs.

"Vendor number" means a number assigned to each contractor delivering care services to medical care recipients.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-022 Due dates for cost reports. (1) The contractor ~~((shall))~~ must submit annually a complete report of costs and financial conditions of the contractor that is prepared and presented in a standardized manner and in accordance with this chapter and chapter 74.46 RCW.

(2) The department will review the contractor's costs and financial conditions in accordance with the methodology effective at the time the contractor incurred the costs as described in chapters 388-96 WAC and 74.46 RCW.

(3) Not later than March 31st of each year, each contractor ~~((shall))~~ must submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

(4) Cost reports for new contractors must be submitted in accordance with WAC 388-96-026.

(5) To properly complete the cost report, the contractor must submit the entire cost report, including the certification page to the document electronically. A cost report is not complete until the department receives both documents.

~~((3))~~ (6) Not later than one hundred twenty days following the termination or assignment of a contract, the terminating or assigning contractor ~~((shall))~~ must submit to the department a cost report for the period from January 1st through the date the contract was terminated or assigned.

~~((4))~~ If the cost report is not properly completed or if it is not received by the due date established in subsection (2) or (3) of this section, all or part of any payments due under the contract may be withheld by the department until such time as required cost report is properly completed and received.

(7) If the contractor does not properly complete the cost report or the department does not receive it by the due date established in this section, the department may withhold all or part of any payments due under the contract until the department receives the contractor's properly completed cost report.

~~((5))~~ (8) The department may impose civil fines~~((;))~~ or take adverse rate action against contractors and former contractors who do not submit properly completed cost reports by the applicable due date established in ~~((subsection (2) or (3) of))~~ this section.

AMENDATORY SECTION (Amending WSR 89-01-095, filed 12/21/88)

WAC 388-96-107 Requests for extensions. (1) A contractor may request in writing an extension for submitting cost reports. Contractor requests ~~((shall))~~ must:

(a) Be addressed to the manager, ~~((residential))~~ nursing facility rates program;

(b) State the circumstances prohibiting compliance with the report due date; and

(c) Be received by the department at least ten days prior to the due date of the report.

(2) The department may grant two extensions of up to thirty days each, only if the circumstances, stated clearly, indicate the due date cannot be met and the following conditions are present:

(a) The circumstances were not foreseeable by the provider; and

(b) The circumstances were not avoidable by advance planning.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-122 Amendments to reports. (1) For the purpose of determining allowable costs, the department ~~((shall))~~ must consider an amendment to an annual report only if filed by the provider before the receipt by the provider of the notification scheduling the department's audit. The contractor may file an amendment subsequent to such notification and pursuant to the provisions of RCW 74.46.531 to adjust a payment rate allocation because of an error or omission. When the provider files an amendment, the department ~~((shall))~~ must consider it only if significant errors or omissions are discovered. The department ~~((shall))~~ must deem errors or omissions "significant" when the errors or omissions would mean a net difference of two cents or more per patient day or one thousand dollars or more in reported costs, whichever is higher, in any component rate allocation.

(2) To file an amendment, ~~((only those cost report pages where changes appear need to be filed, together with the certification required by WAC 388-96-117))~~ the provider must submit the amended cost report and amended cost report certification page to the department electronically. An amended cost report is not complete until the department receives both documents.

~~((2))~~ (3) If an amendment is filed, a contractor shall also submit with the amendment an account of the circumstances relating to and the reasons for the amendment, along with supporting documentation. The department ~~((shall))~~ must refuse to consider an amendment resulting in a more favorable settlement or payment rate allocation to a contractor if the amendment is not the result of circumstances beyond the control of the contractor or the result of good-faith error under the system of cost allocation and accounting in effect during the reporting period in question.

~~((3))~~ (4) Acceptance or use by the department of an amendment to a cost report ~~((shall in no way be construed as))~~ is not a release of applicable civil or criminal liability.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-205 Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions. (1) The purposes of department audits and examinations under this chapter and chapter 74.46 RCW are to ascertain that:

(a) Allowable costs for each year for each medicaid nursing facility are accurately reported;

(b) Cost reports accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor;

(c) The contractor's revenues, expenditures, ~~((and costs of the building, land, land improvements, building improvements, and movable and fixed equipment))~~ building, building

square footage, building improvements, leasehold improvements, fixed equipment, and age are recorded in compliance with department requirements, instructions, and generally accepted accounting principles;

(d) The contractor is in compliance with the direct care staffing requirements found in this chapter and chapter 74.42 RCW;

(e) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds; and

~~((e))~~ (f) The contractor has reported and maintained accounts receivable in compliance with this chapter and chapter 74.46 RCW.

(2) The department ~~((shall))~~ must examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine whether the information is correct, complete, and reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and chapter 74.46 RCW. The department ~~((shall))~~ must determine the scope of the examination.

(3) When the department finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care ~~((, therapy care, and support services))~~ under WAC ~~((388-96-211(3) and (4)))~~ 388-96-218 or in any component rate resulting from undocumented or misreported costs. A schedule of the adjustments ~~((shall))~~ must be provided to the contractor, including dollar amount and explanations for the adjustments. Adjustments ~~((shall be))~~ are subject to review under WAC 388-96-901 and 388-96-904.

(4) Audits of resident trust funds and receivables ~~((shall))~~ must be reported separately and in accordance with the provisions of this chapter and chapter 74.46 RCW.

(5) The contractor ~~((shall))~~ must:

(a) Provide access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds. To ensure accuracy, the department may require the contractor to submit for departmental review any underlying financial statements or other records, including income tax returns, relating to the cost report directly or indirectly;

(b) ~~((Prepare a reconciliation of the cost report with:~~

~~(i) Applicable federal income and federal and state payroll tax returns; and~~

~~(ii) The records for the period covered by the cost report.~~

~~((e))~~ Make available to the department staff an individual or individuals to respond to questions and requests for information from department staff. The designated individual or individuals ~~((shall))~~ must have sufficient knowledge of the issues, operations, or functions to provide accurate and reliable information; and

(c) Prepare a reconciliation of the cost report with:

(i) Applicable federal income and federal and state payroll tax returns; and

(ii) The records for the period covered by the cost report.

(6) If an examination discloses material discrepancies, undocumented costs, or mishandling of resident trust funds, the department may open or reopen one or both of the two preceding cost reports or resident trust fund periods, whether

examined or unexamined, for indication of similar discrepancies, undocumented costs, or mishandling of resident trust funds.

(7) Any assets, liabilities, revenues, or expenses reported as allowable that are not supported by adequate documentation in the contractor's records ~~((shall))~~ must be disallowed. Documentation must show both that costs reported were incurred during the period covered by the report and were related to resident care, and that assets reported were used in the provision of resident care.

(8) When access is required at the facility or at another location in the state, the department ~~((shall))~~ must notify ~~((a))~~ the contractor of its intent to examine all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(9) The department is authorized to assess civil fines and take adverse rate action if a contractor, or any of its employees, ~~((does))~~ do not allow access to the contractor's nursing facility records.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-208 Reconciliation of medicaid resident days to billed days and medicaid payments—Payments due—Accrued interest—Withholding funds. (1) The department ~~((shall))~~ must reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for each calendar year, or for that portion of the calendar year the provider's contract was in effect.

(2) The contractor ~~((shall))~~ must make any payment owed the department as determined by either reconciliation ~~((and/or))~~ or settlement, or both, at the lower of cost or rate ~~((in direct care, therapy care, and support services component rate allocations))~~ within sixty days after the department notifies the contractor of the amount owed.

(3) The department ~~((shall))~~ must pay the contractor within sixty days after it notifies the contractor of an underpayment.

(4) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification of the contractor. Accrued interest ~~((shall))~~ must be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(5) The department ~~((shall))~~ may withhold funds from the contractor's payment for services and ~~((shall))~~ may take all other actions authorized by law to recover from the contractor amounts due and payable including any accrued interest. Neither a timely filed appeal under WAC 388-96-901 and 388-96-904 nor the commencement of judicial review as may be available to the contractor in law to contest a payment obligation determination shall delay recovery from the contractor or payment to the contractor.

(6) For all cost report periods ending on or before December 31, 2015, the contractor must make payment owed to the department for direct care, therapy, and support services at the lower of the cost or rate.

(7) For all cost report periods beginning January 1, 2016 and ending on or before December 31, 2016, cost in direct

care, therapy, and support services must be combined and compared to the combined weighted rates for direct care, therapy, and support services. The contractor must make payment owed to the department for combined direct care, therapy, and support services at the lower of the cost or rate.

(8) For all cost report periods beginning on or after January 1, 2017, the contractor must make payment owed to the department for direct care at the lower of the cost or rate.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-211 Proposed settlement report—Payment refunds—Overpayments—Determination of unused rate funds—Total and component payment rates.

(1) Contractors ~~((shall))~~ must submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department ~~((shall))~~ must accept or reject the proposed settlement report, explain any adjustments, and if needed, issue a revised settlement report.

(2) Contractors ~~((shall not be))~~ are not required to refund payments made ~~((in the operations, variable return, property, and financing allowance component rates))~~ to cost components not identified in WAC 388-96-208 (7) or (8) in excess of the adjusted costs of providing services corresponding to these components.

(3) The facility ~~((will))~~ must return to the department any overpayment amounts ~~((in each of the direct care, therapy care, and support services rate components))~~ identified in WAC 388-96-208 (7) or (8) that the department identifies following the examination and settlement procedures as described in this chapter, provided that the contractor may retain any overpayment that does not exceed one percent of the facility's ((direct care, therapy care, and support services)) component rate identified in WAC 388-96-208 (7) or (8). However, no overpayments may be retained in a cost center to which savings have been shifted to cover a deficit, as provided in subsection ((4)) (5) of this section. Facilities that are not in substantial compliance for more than ninety days((7)) and facilities that provide substandard quality of care at any time during the period for which settlement is ((being)) calculated, will not be allowed to retain any amount of overpayment in the facility's ((direct care, therapy care, and support services component rate)) cost components identified in WAC 388-96-208 (7) or (8). The terms "not in substantial compliance" and "substandard quality of care" ((shall)) must be defined by federal survey regulations.

(4) ~~((Determination of unused rate funds, including the amounts of direct care, therapy care, and support services to be recovered, shall be done separately for each rate component, and, except as otherwise provided in this subsection, neither costs nor rate payments shall be shifted from one component rate or corresponding service area to another in determining the degree of underspending or recovery, if any. In computing a preliminary or final settlement, savings in the support services cost center shall be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings, but no more than twenty percent of the support~~

~~services component rate may be shifted. In computing a preliminary or final settlement, savings in direct care and therapy care may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor retained overpayments up to one percent of direct care, therapy care, and support services rate components, as authorized in subsection (3) of this section, shall be calculated and applied after all shifting is completed.~~

~~((5))~~ Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW ~~((shall))~~ represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

~~((5))~~ For cost reports ending on or before December 31, 2016, determination of unused rate funds, including the amounts of direct care, therapy, and support services to be recovered, must be done separately for each rate component and, except as otherwise provided in this subsection, neither costs nor rate payments may be shifted from one component rate or corresponding services are to another in determining the degree of underspending or recover, if any. In calculating a preliminary or final settlement, savings in the support services cost center must be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings but no more than twenty percent of the support services component rate may be shifted. In calculating a preliminary or final settlement, savings in direct care and therapy may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor retained overpayments up to one percent of direct care, therapy, and support services rate components, as authorized in subsection (4) of this section, must be calculated and applied after all shifting is completed.

~~((6))~~ For the 2016 calendar year cost report, the following components must be combined for settlement purposes in the following manner:

(a) The direct care, therapy, and support services costs for services provided on or before June 30, 2016 must be combined with the direct care costs for services provided on or after July 1, 2016 and compared to the total combined weighted rate for direct care, therapy, and support services.

(b) The operations rate for services provided on or before June 30, 2016 must be combined with the indirect care rate for services provided on or after July 1, 2016.

(c) The property rate for services provided on or before June 30, 2016 must be combined with the fair market rental rate for services provided on or after July 1, 2016.

(7) The facility must return to the department any overpayment amounts based on the aggregated cost versus rate that the department identifies following the examination and settlement procedures as described in this chapter. The contractor may retain any overpayment that does not exceed one percent of the facility's combined direct care component rate. However, facilities that are not in substantial compliance for more than ninety days and facilities that provide substandard

quality of care at any time during the period for which settlement is calculated will not be allowed to retain any amount of overpayment in the facility's direct care component rate.

(8) Contractors are not required to refund payments made in the indirect care, capital, and quality enhancement component rates in excess of the adjusted costs of providing services corresponding to these components.

(9) For the 2017 calendar year cost report and later, the facility must return to the department any overpayment amounts in the direct care rate component that the department identifies following the examination and settlement procedures as described in this chapter. The contractor may retain any overpayment that does not exceed one percent of the facility's direct care component rate. However, facilities that are not in substantial compliance for more than ninety days and facilities that provide substandard quality of care at any time during the period for which settlement is calculated, will not be allowed to retain any amount of overpayment in the facility's direct care component rate. The terms "not in substantial compliance" and "substandard quality of care" must be defined by federal survey regulations.

(10) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. Spending above the total payment rate or any rate component must not increase payment to a contractor.

(11) While the provisions of RCW 74.46.561(10) are in effect, any reductions and caps must be proportionally allocated to all components before settlement is calculated.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-218 Proposed, preliminary, and final settlements. (1) For each component rate, the department ~~((shall))~~ must calculate a proposed, preliminary, or final settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter ~~((and))~~ or chapter 74.46 RCW.

(2) As part of the cost report, the proposed settlement report is due in accordance with WAC 388-96-022. In the proposed preliminary settlement report, a contractor ~~((shall))~~ must compare the contractor's payment rates during a cost report period, weighted by the number of resident days reported for the same cost report period to the contractor's allowable costs for the cost report period. In accordance with WAC 388-96-205, 388-96-208, and 388-96-211 the contractor ~~((shall))~~ must take into account all authorized shifting, retained savings, and upper limits to rates on a cost center basis.

~~((and))~~ (3) The department will ~~((~~ review the proposed preliminary settlement report for accuracy ~~((~~ and

~~((and))~~ accept or reject the ~~((proposal of the))~~ contractor's proposal. If accepted, the proposed preliminary settlement report ~~((shall))~~ must become the preliminary settlement report. If rejected, the department ~~((shall))~~ must issue, by component payment rate allocation, a preliminary settlement

report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

~~((b))~~ (4) When the department receives the proposed preliminary settlement report ~~((~~

~~((~~ by the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the cost report due date ~~((or~~

~~((A))~~ When the department receives the proposed preliminary settlement report after the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the date the cost report was received.

~~((e))~~ In its discretion, the department may designate a date later than the dates specified in this subsection ~~((2)(b)(i) and (ii) of this section))~~ to issue preliminary settlements.

~~((d))~~ (5) A contractor ~~((shall have))~~ has twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department ~~((shall))~~ must not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement ~~((shall))~~ must be limited to either calculation of the settlement ~~((to the))~~ or application of settlement principles and rules, or both, and ~~((shall))~~ must not encompass rate or audit issues.

~~((z))~~ (6) The department ~~((shall))~~ must issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any administrative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

~~((a))~~ (7) The department ~~((shall))~~ must prepare a final settlement by component payment rate allocation and ~~((shall))~~ must fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department ~~((shall))~~ must take into account all authorized shifting, savings, and upper limits to rates on a component payment rate allocation basis. For the final settlement report, the department ~~((shall))~~ must compare ~~((~~

~~((~~ the payment rates it paid the contractor for the facility in question during the report period, weighted by the number of allowable resident days reported for the period each rate was in effect to the contractor's ~~((~~);

~~((i))~~ (a) Audited allowable costs for the reporting period; or

~~((ii))~~ (b) Reported costs for the nonaudited reporting period.

~~((b))~~ (8) A contractor ~~((shall have))~~ has twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department ~~((shall))~~ must not review a final settlement report. Any administrative review of a final settlement ~~((shall))~~ must be limited to either calculation of the settlement ~~((the))~~ or application of settlement principles and rules, or both, and ~~((shall))~~ must not encompass rate or audit issues.

~~((e))~~ (9) The department ~~((shall))~~ may reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to WAC 388-96-205. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medicaid recipient days.

~~((b))~~ ~~((a))~~ (10) In computing a preliminary or final settlement, a contractor must comply with the requirements of WAC 388-96-211 for retaining or refunding to the department payments made in excess of the adjusted costs of providing services corresponding to each component rate allocation.

~~((b))~~ (11) The nursing facility contractor ~~((shall))~~ must refund all amounts due the department within sixty days after the department notifies the contractor of the overpayment and demands repayment. When notification is by postal mail, the department ~~((shall))~~ must deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt ~~((shall))~~ must be used to determine the sixty day period for repayment. After the sixty day period, interest on any unpaid balance will accrue at one percent per month.

~~((e))~~ (12) Repayment will be without prejudice to obtain review of the settlement determination pursuant to WAC 388-96-901 and 388-96-904. ~~((After an administrative hearing and/or judicial review,))~~ If the payment obligation is reduced~~((, then))~~ after an administrative hearing or judicial review, the department will rescind the difference between the accrued interest on the payment obligation and the interest that would have accrued on the reduced payment obligation from the date interest began to accrue on the original payment obligation.

~~((s))~~ (13) In determining whether a facility has forfeited unused rate funds in its direct care, therapy care, and support services component rates under ~~((authority of))~~ WAC 388-96-211, the following rules ~~((shall))~~ apply:

(a) Federal or state survey officials ~~((shall))~~ must determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status ~~((shall))~~ must be used to determine the beginning and ending dates of any period~~((s))~~ of noncompliance; and

(c) Forfeiture ~~((shall))~~ must occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the settlement period. Also, forfeiture ~~((shall))~~ must occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-502 ~~((Indirect))~~ Secondary and overhead costs. Subject to the provisions of this chapter and chapter 74.46 RCW, when a contractor provides goods or services that are not reimbursable, any ~~((indirect))~~ secondary or overhead costs associated with their provision must be allocated to such goods or services on a reasonable basis approved by the department and must not be reported as allowable costs.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-505 Offset of miscellaneous revenues.
(1) The methodology in (a) through (d) of this subsection is effective for services provided on or before June 30, 2016.

(a) The contractor ~~((shall))~~ must reduce allowable costs whenever the item, service, or activity covered by such costs generates revenue or financial benefits ~~((e.g.,))~~ such as purchase discounts, refunds of allowable costs or rebates) other than through the contractor's normal billing for care services~~((; except))~~. However, the department ~~((shall))~~ must not deduct from the allowable costs of a nonprofit facility unrestricted grants, gifts, and endowments, and interest therefrom.

~~((2))~~ (b) The contractor ~~((shall))~~ must reduce allowable costs for hold-bed revenue in the support services, operations, and property rate components only. In the support services rate component, the amount of reduction ~~((shall))~~ must be determined by dividing a facility's allowable housekeeping costs by total adjusted patient days and multiplying the result by total hold-room days. In the operations rate component, the amount of the reduction ~~((shall))~~ must be determined by dividing a facility's allowable operation costs by total adjusted patient days and multiplying the result by total hold-room days. In the property rate component, the amount of reduction ~~((shall))~~ must be determined by dividing allowable property costs by the total adjusted patient days and multiplying the result by total hold-room days.

~~((3))~~ (c) Where goods or services are sold, the amount of the reduction ~~((shall be))~~ is the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, ~~((it shall be))~~ the amount of the reduction is the full amount of the revenue received. Where financial benefits such as purchase discounts, refunds of allowable costs, or rebates are received, the amount of the reduction ~~((shall be))~~ is the amount of the discount or rebate. Financial benefits such as purchase discounts, refunds of allowable costs and rebates, including industrial insurance rebates, ~~((shall))~~ must be offset against allowable costs in the year the contractor actually receives the benefits.

~~((4))~~ (d) Only allowable costs ~~((shall))~~ may be recovered under this ~~((section))~~ subsection. Costs allocable to activities or services not included in nursing facility services~~((; e.g.,))~~ (such as costs of vending machines and services specified in chapter 388-86 WAC not included in nursing facility services~~((;))~~) are nonallowable costs.

(2) The methodology in (a) through (d) of this subsection is effective for services provided on or after July 1, 2016.

(a) The contractor must reduce allowable costs whenever the item, service, or activity covered by such costs generates revenue or financial benefits (such as purchase discounts, refunds of allowable costs, or rebates) other than through the contractor's normal billing for care services. However, the department must not deduct from the allowable costs of a nonprofit facility unrestricted grants, gifts, and endowments, and interest therefrom.

(b) The contractor must reduce allowable costs for hold-bed revenue in the indirect care rate component only. The amount of reduction must be determined by dividing a facility's allowable housekeeping costs by total adjusted patient days and multiplying the result by total hold-room days.

(c) Where goods or services are sold, the amount of the reduction is the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, the amount of the reduction is the full amount of the revenue received. Where financial benefits such as purchase discounts, refunds of allowable costs, or rebates are received, the amount of the reduction is the amount of the discount or rebate. Financial benefits such as purchase discounts, refunds of allowable costs, and rebates, including industrial insurance rebates, must be offset against allowable costs in the year the contractor actually receives the benefits.

(d) Only allowable costs may be recovered under this subsection. Costs allocable to activities or services not included in nursing facility services (such as costs of vending machines and services specified in chapter 388-86 WAC not included in nursing facility services) are nonallowable costs.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-525 Education and training. (1) Necessary and ordinary expenses of on-the-job training and in-service training required for employee orientation and certification training directly related to the performance of duties assigned will be allowable costs. Cost of training for which the nursing facility is reimbursed outside the payment rate is an unallowable cost.

(2) Necessary and ordinary expenses of recreational and social activity training conducted by the contractor for volunteers will be allowable costs. Expenses of training programs for other nonemployees will not be allowable costs.

(3) Expenses for travel, lodging, and meals associated with education and training ~~((in the states of Idaho, Oregon, and Washington and the province of British Columbia))~~ are allowable if the expenses meet the requirements of this chapter.

~~(4) ((Except travel, lodging, and meal expenses, education and training expenses at sites outside of the states of Idaho, Oregon, and Washington and the province of British Columbia are allowable costs if the expenses meet the requirements of this chapter.~~

~~(5))~~ Costs designated by this section as allowable ~~((shall be))~~ are subject to any applicable cost center limit established by this chapter.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-542 Home office or central office. (1) ~~((When calculating the median bid on home and central office costs and determining which home and central office costs to test against the median bid,))~~ The department will include all allowable ~~((s))~~ reported home ~~((t))~~ or central office costs including all costs that are ~~((nonduplicative,))~~ documented, ordinary, necessary, and related to the provision of medical and personal care services to authorized patients.

~~((2)a) Assets used in the provision of services by or to a nursing facility, but not located on the premises of the nursing facility, shall not be included in net invested funds or in the calculation of property payment for the nursing facility.~~

~~(b) The nursing facility may allocate depreciation, interest expense, and operating lease expense for the home office, central office, and other off-premises assets to the cost of the services provided to or by the nursing facility on a reasonable statistical basis approved by the department.~~

~~((e) The))~~ Allocated costs ~~((of (b) of this subsection))~~ may be included in the cost of services in such cost centers where such services and related costs are appropriately reported.

~~((3))~~ (2) Home office or central office costs must be allocated and reported ~~((in conformity with the department-approved JCAD methodology as required by WAC 388-96-534)).~~

~~((4) Home office or central office costs are subject to the limitation specified in WAC 388-96-585.)~~

AMENDATORY SECTION (Amending WSR 97-17-040, filed 8/14/97, effective 9/14/97)

WAC 388-96-554 ~~((Expensing))~~ Equipment. ~~((The following costs shall be expensed:))~~

(1) The contractor must expense the following equipment costs to indirect care:

(a) Expenditures for ~~((depreciable assets))~~ equipment with a historical cost of seven hundred fifty dollars or less per unit ~~((or a useful life of one year or less from the date of purchase))~~ and a useful life of one year or less from the date of purchase; and

(b) Expenditures for and costs of repairs necessary to maintain the useful life of equipment including furniture and furnishings and real property items, components, or improvements that cost less than seven hundred fifty dollars.

(2) Subsection (1) of this section ~~((shall))~~ does not apply if:

(a) The ~~((depreciable asset))~~ equipment was acquired in a group purchase where the total cost exceeded seven hundred fifty dollars; or

(b) The ~~((depreciable asset))~~ equipment was part of the initial equipment or stock of the nursing home.

~~((3) Expenditures for and costs of building and other real property items, components and improvements, whether for leased or owner-operated facilities, of seven hundred and fifty dollars or less.~~

~~(4) Expenditures for and costs of repairs necessary to maintain the useful life of equipment, including furniture and furnishings, and real property items, components or improve-~~

ments which do not increase the useful life of the asset by two years or more. If a repair is to the interior or exterior of the structure, the term "asset" shall refer to the structure.

~~(5) Remaining undepreciated cost of equipment, including furniture or furnishings or real property items, components, or improvements which are retired and not replaced, provided such cost shall be offset by any proceeds or compensations received for such assets, and such cost shall be expensed only if the contractor has made a reasonable effort to recover at least the outstanding book value of such assets. If a retired asset is replaced, WAC 388-96-572(3) shall apply and the replacement or renewal shall be capitalized if required by WAC 388-96-553.)~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-556 Initial cost of operation. (1) The necessary and ordinary one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility ~~((shall be))~~ are allowable costs. These expenses ~~((shall be))~~ are limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs ~~((shall))~~ include, but ~~((not be))~~ are not limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training ~~((; except, that they shall exclude))~~. Start-up costs do not include expenditures for capital assets. ((These)) Start-up costs ((will be)) are allowable in the ~~((operations))~~ indirect care cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other organization and fees paid to states for incorporation ~~((; except, that they))~~. However, organizational costs do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the ((operations)) indirect care cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

~~((4) Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to WAC 388-96-559. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care and shall not exceed the project certificate of need time period pursuant to RCW 70.38.125.)~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-560 Land(~~;- improvements — Depreciation~~)). ~~Land is not depreciable. The cost of)~~ Land includes but is not limited to, off-site sewer and water lines, public utility charges necessary to service the land, governmental

assessments for street paving and sewers, the cost of permanent roadways and grading ~~((of a nondepreciable nature))~~, and the cost of curbs and sidewalks, replacement of which is not the responsibility of the contractor.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-580 Operating leases of office equipment. (1) Rental costs of office equipment under arm's-length operating leases ~~((shall be))~~ are allowable to the extent such costs are necessary, ordinary, and related to patient care.

(2) The department ~~((shall))~~ must pay office equipment rental costs in the ~~((operations))~~ indirect component rate allocation. Office equipment may include items typically used in administrative or clerical functions such as telephones, copy machines, desks and chairs, calculators and adding machines, file cabinets, typewriters, and computers.

~~((3) The department shall not pay for depreciation of leased office equipment.)~~

AMENDATORY SECTION (Amending WSR 15-09-025, filed 4/7/15, effective 5/8/15)

WAC 388-96-585 Unallowable costs. (1) Unallowable costs listed in subsection (2) of this section represent a partial summary of such costs, in addition to those unallowable under chapter 74.46 RCW and this chapter.

(2) Unallowable costs include but are not limited to the following:

(a) Costs of items or services not covered by the medical care program. Costs of such items or services ~~((will be))~~ are unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution ~~((;))~~.

(b) Costs of services and items provided to recipients ~~((which are))~~ covered by the medical care program but not included in the medicaid per-resident day payment rate established under this chapter and chapter 74.46 RCW ~~((;))~~.

(c) Costs associated with a capital expenditure ~~((subject to section 1122 approval (part 100, Title 42 C.F.R.))~~ if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations ~~((;))~~.

(d) Costs associated with a construction or acquisition project requiring certificate of need approval ~~((;))~~ or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained ~~((;))~~.

(e) Interest costs other than those provided by WAC 388-96-556(4) on and after January 1, 1985 ~~((;))~~.

(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care ~~((;))~~.

(g) Costs in excess of limits or in violation of principles set forth in this chapter(;;).

(h) Costs resulting from transactions or the application of accounting methods (~~(which)~~) that circumvent the principles of the payment system set forth in this chapter and chapter 74.46 RCW(;;).

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere(;;).

(j) Bad debts of ~~((non-))~~ Title XIX recipients ~~((Bad debts of Title XIX recipients are allowable only when))~~ are unallowable unless all the following apply:

(i) The debt is related to covered services(;;).

(ii) ~~((#))~~ The debt arises from the recipient's required contribution toward the cost of care(;;).

(iii) The provider can establish reasonable collection efforts were made. Reasonable collection efforts ~~((shall))~~ consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of non-Title XIX recipients(;;).

(iv) The debt was actually uncollectible when claimed as worthless(~~(and))~~).

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

(k) Charity and courtesy allowances(;;).

(l) Cash, assessments, or other contributions(~~(excluding dues;))~~ to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations(;;).

(m) Vending machine expenses(;;). This does not include membership dues.

(n) Expenses for barber or beautician services not included in routine care(;;).

(o) Funeral and burial expenses(;;).

(p) Costs of gift shop operations and inventory(;;).

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs(;;).

(r) Fund-raising expenses, except those directly related to the patient activity program(;;).

(s) Penalties and fines(;;).

(t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations(;;).

(u) ~~((Televisions acquired prior to July 1, 2001;~~

~~(v))~~ Federal, state, and other income taxes(;;).

~~((w))~~ (v) Costs of special care services except where authorized by the department;

~~((x))~~ (w) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis(;;). For example, key-man insurance and other insurance or retirement plans(;;).

~~((y))~~ (x) Expenses of profit-sharing plans(;;).

~~((z))~~ (y) Expenses related to the purchase ~~((and/or))~~ or use of private or commercial airplanes ~~((which))~~ that are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care(;;).

~~((aa))~~ (z) Personal expenses and allowances of any nursing home employees or owners or relatives of any nursing home employees or owners(;;).

~~((bb))~~ (aa) All expenses of maintaining professional licenses or membership in professional organizations(;;).

~~((cc))~~ (bb) Costs related to agreements not to compete(;;).

~~((dd))~~ (cc) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not(;;) and whether recognized under generally accepted accounting principles or not(;;).

~~((ee))~~ (dd) Expenses related to vehicles ~~(which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;))~~

~~((ff))~~ (dd) Legal and consultant fees in connection with a fair hearing against the department when the department's board of appeals upholds the department's actions in an administrative review decision. When the administrative review decision is pending, reported legal and consultant fees ~~((will be))~~ are unallowable. To be allowable, the contractor must report legal and consultant fees related to an administrative review decision issued in the contractor's favor in the cost report period in which the board of appeals issues its decision irrespective of when the legal and consultant fees related to the administrative review were incurred(;;).

~~((gg))~~ (ee) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department. Judicial review is a lawsuit against the department(;;).

~~((hh))~~ (ff) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets(;;).

~~((ii))~~ (gg) All rental or lease costs other than those provided for in WAC 388-96-580(;;).

~~((jj))~~ (hh) Post-survey charges incurred by the facility ~~((as a result of subsequent inspections))~~ under ~~((RCW 18.51-050 which occur beyond the first postsurvey visit during the certification survey calendar year))~~ RCW 18.51-060(;;).

~~((kk))~~ (ii) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through a service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had ~~((they))~~ the purchased nursing care staff been paid at the average hourly wage ~~((including related taxes and benefits;))~~ for in-house nursing care staff of like classification at the same nursing facility, including related taxes and benefits, as reported in the most recent cost report period(;;).

~~((ll))~~ For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions(;;)

~~((mm))~~ (jj) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate(;;).

~~((nn))~~ (kk) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space(;;).

~~((oo))~~ (ll) Travel expenses that are not necessary, ordinary, and related to resident care~~((;))~~.

~~((pp))~~ (mm) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia~~((;))~~.

~~((qq))~~ Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;

~~((rr))~~ (nn) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health~~((;))~~.

~~((ss))~~ (oo) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel~~((;))~~.

~~((tt))~~ (pp) Costs and fees associated with filing a petition for bankruptcy~~((;))~~.

~~((uu))~~ (qq) All advertising or promotional costs, except reasonable costs of help wanted advertising~~((;))~~.

~~((vv))~~ (rr) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds~~((;))~~.

~~((ww))~~ All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period;

~~((xx))~~ (ss) Tax expenses that a nursing facility has never incurred~~((;))~~.

~~((yy))~~ Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006~~((;))~~

~~((zz))~~ (tt) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits against the department ~~((shall be unallowable; and))~~.

~~((aaa))~~ (uu) Increased costs resulting from a series of transactions between the same parties and involving the same assets ~~((e.g.,))~~ such as sale and lease back~~((;))~~ and successive sales or leases of a single facility or piece of equipment).

(vv) Costs related to a nursing assistant certified training program.

(ww) Effective July 1, 2012, payments made relating to the safety net assessment.

(xx) Building renovations, building improvements, or leasehold improvements that require preapproval from the department of health and were not preapproved.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-710 Prospective payment rate for new contractors. (1) The department will establish an initial prospective medicaid payment rate for a new contractor as defined under WAC 388-96-026 within sixty days following the new contractor's application and approval for a license to operate the facility under chapter 18.51 RCW. The rate will take effect as of the effective date of the contract, except as provided in this section, and will comply with all the provi-

sions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums set forth.

(2) ~~((Except for quarterly updates per RCW 74.46.501 (7)(e), the rate established for a new contractor as defined in WAC 388-96-026 (1)(a) or (b) will remain in effect for the nursing facility until the rate can be reset effective July 1 using the first cost report for that facility under the new contractor's operation containing at least six months' data from the prior calendar year, regardless of whether reported costs for facilities operated by other contractors for the prior calendar year in question will be used to cost rebase their July 1 rates. The new contractor's rate thereafter will be cost rebased only as provided in this chapter and chapter 74.46 RCW.~~

~~((3))~~ To set the initial prospective medicaid payment rate for a new contractor as defined in WAC 388-96-026 (1)(a) and (b), the department will:

(a) Determine ~~((whether the new contractor nursing facility belongs to the metropolitan statistical area (MSA) peer group or the non-MSA peer group using the latest information received from the office of management and budget or the appropriate federal agency))~~ the direct care rate by multiplying the current direct care industry median per RCW 74.46.561(8) by the appropriate county wage index by the appropriate industry medicaid average case mix index (MACMI);

(b) ~~((Select all nursing facilities from the department's records of all the current medicaid nursing facilities in the new contractor's peer group with the same bed capacity plus or minus ten beds. If the selection does not result in at least seven facilities, then the department will increase the bed capacity by plus or minus five bed increments until a sample of at least seven nursing facilities is obtained))~~ Assign the new provider the indirect price based rate per RCW 74.46.561(8);

(c) ~~((Based on the information for the nursing facilities selected under subsection (3)(b) of this section and available to the department on the day the new contractor began participating in the medicaid payment rate system at the facility, rank from the highest to the lowest the component rate allocation in direct care, therapy care, support services, and operations cost centers and based on this ranking:~~

(i) Determine the middle of the ranking and then identify the rate immediately above the median for each cost center identified in subsection (3)(c) of this section. The rate immediately above the median will be known as the "selected rate" for each cost center;

(ii) Set the new contractor's nursing facility component rate allocation for therapy care, support services, and operations at the "selected rate";

(iii) Set the direct care rate using data from the direct care "selected" rate facility identified in (c) of this subsection as follows:

(A) The cost per case mix unit will be the rate base allowable case mixed direct care cost per patient day for the direct care "selected" rate facility, whether or not that facility is held harmless under WAC 388-96-728 and 388-96-729, divided by the facility average case mix index per WAC 388-96-741;

~~((B))~~ The cost per case mix unit determined under ~~((c)(ii)(A))~~ of this subsection will be multiplied by the medie-

aid average case mix index per WAC 388-96-740. The product will be the new contractor's direct care rate under case mix; and

(C) The department will not apply RCW 74.46.506 (5)(k) to any direct care rate established under subsection (5)(e) or (f) of this section. When the department establishes a new contractor's direct care rate under subsection (5)(e) or (f) of this section, the new contractor is not eligible to be paid by a "hold harmless" rate as determined under RCW 74.46.506 (5)(k);

(iv) Set the property rate in accordance with the provisions of this chapter and chapter 74.46 RCW; and

(v) Set the financing allowance and variable return component rate allocations in accordance with the provisions of this chapter and chapter 74.46 RCW. In computing the variable return component rate allocation, the department will use for direct care, therapy care, support services and operations rate allocations those set pursuant to subsection (3)(e)(i), (ii) and (iii) of this section.

(d) Any subsequent revisions to the rate component allocations of the sample members will not impact a "selected rate" component allocation of the initial prospective rate established for the new contractor under this subsection.

(4) For the WAC 388-96-026 (1)(a) or (b) new contractor, the department will establish rate component allocations for:

(a) Direct care, therapy care, support services and operations based on the "selected rates" as determined under subsection (3)(e) of this section that are in effect on the date the new contractor began participating in the program;

(b) Property in accordance with the provisions of this chapter and chapter 74.46 RCW using for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the property rate will be zero. The property rate will remain zero until the information is received;

(c) Variable return in accordance with the provisions of this chapter and chapter 74.46 RCW using the "selected rates" established under subsection (3)(e) of this section that are in effect on the date the new contractor began participating in the program; and

(d) Financing allowance using for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the net book value of allowable assets will be zero. The financing allowance rate component allocation will remain zero until the information is received.

(5) The initial prospective payment rate for a new contractor as defined under WAC 388-96-026 (1)(a) or (b) will be established under subsections (3) and (4) of this section. If the WAC 388-96-026 (1)(a) or (b) contractor's initial rate is set:

(a) Between July 1, 2000 and June 30, 2001, the department will set the new contractor's rates for:

(i) July 1, 2001 using the July 1, 2001 rates for direct care, therapy care, support services, and operations of the sample facilities used to set the initial rate under subsections (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(a)(i) of this section;

(ii) July 1, 2002 rate using 2001 cost report data; and

(iii) All July 1 rates following July 1, 2002 in accordance with this chapter and chapter 74.46 RCW;

(b) Between July 1, 2001, and June 30, 2002, the department will set the new contractor's rates for:

(i) July 1, 2002 using July 1, 2002 rates for direct care, therapy care, support services, and operation of the sample facilities used to set the initial rate under subsections (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(b)(i) of this section;

(ii) July 1, 2003 rate by rebasing using 2002 cost report data in accordance with this chapter and chapter 74.46 RCW; and

(iii) All July 1 rates following July 1, 2003 in accordance with this chapter and chapter 74.46 RCW; or

(c) Between July 1, 2002, and June 30, 2003, the department will set the contractor's rates for:

(i) July 1, 2003 using July 1, 2003 rates for direct care, therapy care, support services, and operation of the sample facilities used to set the initial rate under subsection (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(c)(i) of this section;

(ii) July 1, 2004 by rebasing using 2003 cost report data; and

(iii) All July 1 rates following July 1, 2004 in accordance with this chapter and chapter 74.46 RCW.

(6) For the WAC 388-96-026 (1)(c) new contractor, the initial prospective payment rate will be the last prospective payment rate the department paid to the medicare contractor operating the nursing facility immediately prior to the effective date of the new medicare contract or assignment. If the WAC 388-96-026 (1)(c) contractor's initial rate is set:

(a) Between October 1, 1998 and June 30, 1999, the department will not rebase the contractor's rate for:

(i) July 1, 1999; and

(ii) July 1, 2000;

(b) Between July 1, 1999 and June 30, 2000, the department will for:

(i) July 1, 2000 not rebase the new contractor's rate;

(ii) July 1, 2001 rebase the new contractor's rate using twelve months of cost report data derived from the old contractor's and the new contractor's 1999 cost reports; and

(iii) July 1, 2002 not rebase the new contractor's rate; and

(iv) July 1, 2003 not rebase the new contractor's rate;

(e) Between July 1, 2000 and June 30, 2001, the department will for:

(i) July 1, 2001 rebase the new contractor's rate using the old contractor's 1999 twelve month cost report;

(ii) July 1, 2002 not rebase the new contractor's rate;

(iii) July 1, 2003 not rebase the new contractor's rate; or

(d) Between July 1, 2001 and June 30, 2002, the department will for:

(i) July 1, 2002 not rebase the new contractor's rate;

(ii) July 1, 2003 not rebase the new contractor's rate; and

(iii) July 1, 2004 rebase the new contractor's rate using

the new contractor's 2002 cost report containing at least six month's data.

(7)) Determine a capital rate once the facility has submitted square footage and facility age information per RCW 74.46.561(5) and the department accepts it; and

(d) Use the facility's available centers for medicare and medicaid date for at least the three quarter period currently being measured by the department to calculate a quality enhancement rate and if no data is available, the department will not pay a quality enhancement.

(3) A prospective payment rate set for all new contractors will be subject to adjustments for economic trends and conditions as authorized and provided in this chapter and in chapter 74.46 RCW.

~~((8) For a WAC 388-96-026 (1)(a), (b) or (c) new contractor, the medicaid case mix index and facility average case mix index will be determined in accordance with this chapter and chapter 74.46 RCW.))~~

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-713 Rate determination. (1) Each nursing facility's medicaid payment rate for services provided to medical care recipients will be determined, adjusted, and updated prospectively as provided in this chapter and in chapter 74.46 RCW. The department will calculate any limit, ~~((id, and/or))~~ median, or both only when it rebases each nursing facility's July 1st medicaid payment rate in accordance with chapter 74.46 RCW and this chapter.

(2) If the contractor participated in the program for less than six months of the prior calendar year, its rates will be determined by procedures set forth in WAC 388-96-710.

(3) Contractors ~~((submitting))~~ that submit correct and complete cost reports by March 31st, ~~((shall))~~ must be notified of their rates by July 1st, unless circumstances beyond the control of the department interfere.

(4) In setting rates, the department will use the greater of actual days from the cost report period on which the rate is based or days calculated at minimum occupancy pursuant to chapter 74.46 RCW.

~~((5) Adjusted cost report data from 1999 shall be used for July 1, 2001 through June 30, 2005 direct care, therapy~~

~~care, support services, and operations component rate allocations.))~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-758 Add-on for low-wage workers. (1) ~~((The department will grant a low wage add on payment not to exceed one dollar and fifty seven cents per resident day to any nursing home provider that has indicated a desire to receive the add on pursuant to subsection (7) of this section.))~~ A nursing home may use the low-wage worker add-on only for in-house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add-on to:

(a) Increase wages, benefits, ~~((and/or))~~ or staffing levels for certified nurse aides;

(b) Increase wages ~~((and/or))~~ or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than fifteen dollars in calendar year 2008, according to cost report data ~~((The department has determined that the additional categories of workers qualifying under this standard are)),~~ including:

(i) Activities directors and assistants;

(ii) Patient choices coordinators;

(iii) Central supply/ward clerks;

(iv) Expanded community service workers; and

(v) Social workers; and

(c) Address wage compression for related job classes immediately affected by wage increases to low-wage workers.

(2) A nursing home that receives a low-wage add-on ~~((shall))~~ must report to the department its expenditure of that add-on by:

(a) Completing cost report schedule L 1; and

(b) Returning it to the department by January 31st.

(3) By examining cost report schedule L 1, the department will determine whether the nursing home complied with the statutory requirements for distribution of the low wage add-on. When the department is unable to determine or unsure that the statutory requirements have been met, it will conduct an on-site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add-on will be reconciled at the same time as the regular settlement process but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add-on to gross dollars spent.

(5) When the department determines that the low wage add-on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of cost report schedule L 1 for any calendar year in which the low wage add-on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of cost report schedule L 1 irrespective of the calendar year in which it is paid.

~~((7) Each May of the calendar year, the department will ask nursing home contractors whether they will want to continue to receive the add-on or begin to receive the add-on. For nursing home contractors responding by May 31st indicating a desire to receive the low wage worker add-on, the department will pay them the low wage add-on effective July 1st. For nursing home contractors that do not respond by May 31st indicating a desire to receive the low wage worker add-on, the department will cease or not begin paying them the low wage add-on effective July 1st.))~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-759 Standards for low-wage (~~work-ers~~) worker add-on. (1) In accordance with WAC 388-96-758, the low-wage worker add-on must be used to provide increases in wages or benefits, or to address resulting wage compression beginning on or after the date on which the add-on is first included in the rate. The low-wage worker add-on may be used to increase staffing levels for certified nurse aides only. Nursing home contractors receiving the low-wage add-on may not use it to pay for increases for time periods that they were not receiving the low wage worker add-on.

(2) Any type of traditional employee benefit is allowable. Such benefits typically fall in one of two categories: retirement(;) and life or health insurance. However, nontraditional benefits are also allowable (for example, wellness benefits, subsidized meals, or assistance with daycare).

(3) The employer's share of payroll taxes associated with wages and benefits may be covered with the add-on.

(4) For purposes of wage compression, an "immediately affected" job class is one that is related to the low-wage worker category, either in the organizational structure (for example, it supervises the low-wage worker category) or by existing practice (for example, the facility has a benchmark of paying that job class a certain percentage more than the low-wage worker category). Facilities must be able to explain the basis of the relationship if requested. Because the statute refers to "resulting wage compression," a facility must use a portion of the add-on to increase wages or benefits before it may use any of the add-on to address any wage compression caused by such increase.

(5) A facility may use the add-on in relation to any of the job categories listed in WAC 388-96-758, regardless of whether the average wage it pays to its own employees is above fifteen dollars per hour, either before or after including the additional wages funded by the add-on.

(6) Wages or benefits, including employee bonuses, otherwise properly paid with the add on will not be considered as unallowable costs (~~per~~) under RCW 74.46.410 (2)(x).

(7) The low-wage worker add-on payments calculated in accordance with WAC 388-96-758 and this section (~~shall~~) must be adjusted to the extent necessary to comply with RCW 74.46.421.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-781 Exceptional care rate add-on—Covered medicaid residents. A nursing facility (NF) may

receive an increase in its direct care (~~and/or therapy component~~) rate allocations for providing exceptional care to a medicaid resident who:

(1) Receives specialized services to meet chronic complex medical conditions and neurodevelopment needs of medically fragile children and resides in a NF where all residents are under age twenty-one with at least fifty percent of the residents entering the facility before the age of fourteen;

(2) Receives expanded community services (ECS);

(3) Is admitted to (~~the~~) a NF as an extraordinary medical placement (EMP) and the department of corrections (DOC) has approved the exceptional direct care (~~and/or therapy payment~~);

(4) Is ventilator or tracheotomy (VT) dependent and resides in a NF that the department has designated as active ventilator-weaning center;

(5) Has a traumatic brain injury (TBI) established by a comprehensive assessment reporting evaluation (CARE) assessment administered by department staff and resides in a NF that the department has designated as capable for TBI patients;

(6) Has a TBI and currently resides in nursing facility specializing in the care of TBI residents where more than fifty percent of residents are classified with TBIs based on the federal minimum data set assessment (MDS (~~2~~) 3.0 or its successor); or

(7) Is admitted to a NF from a hospital with an exceptional care need and medicaid purchasing administration (MPA) or a successor administration has approved the exceptional direct care (~~and/or therapy~~) payment.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-782 Exceptional (~~therapy care and exceptional~~) direct care—Payment. (1) For WAC 388-96-781(1) residents, the department will pay the Oregon medicaid rate.

(2) For WAC 388-96-781 (4), (5)(~~and~~), (6), and (7) residents, the department may establish a rate add-on that when added to the nursing facility's per diem medicaid rate does not exceed the cost of caring for the client in a hospital.

(3)(~~and~~) Costs related to payments resulting from increases in direct care component rates under subsection (2) of this section (~~shall~~) must be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care (~~shall~~) must be for rate setting, settlement, and other purposes deemed appropriate by the department(~~;~~ ~~or~~

(b) Costs related to payments resulting from increases in therapy care component rates under subsection (2) of this section shall not be offset against the facility's examined, allowable therapy care costs, for each report year or partial period such increases are paid)).

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-901 Disputes. (1) When a contractor wishes to contest the way in which the department applied a

statute or department rule to the contractor's circumstances, the contractor ~~((shall))~~ must pursue the administrative review process prescribed in WAC 388-96-904.

(a) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW subject to administrative review under WAC 388-96-904 include but are not limited to the following:

- (i) Determining a nursing facility payment rate;
- (ii) Calculating a nursing facility settlement;
- (iii) Imposing a civil fine on the nursing facility;
- (iv) Suspending payment to a nursing facility; ~~((or))~~ and
- (v) Conducting trust fund and accounts receivable audits.

(b) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW not subject to administrative review under WAC 388-96-904 include but are not limited to:

- (i) Actions taken under the authority of RCW 74.46.421 and sections of this chapter implementing RCW 74.46.421;
- (ii) Case mix accuracy review of minimum data set (MDS) nursing facility resident assessments ~~((, which shall be))~~ that are limited to separate administrative review under ~~((the provisions of))~~ WAC 388-96-905;
- (iii) ~~((Quarterly and))~~ Semiannual rate updates to reflect changes in a facility's resident case mix including contractor errors made in the MDSs used to update the facility's resident case mix;
- (iv) Actions taken under the exceptional direct ~~((and therapy))~~ care program codified at WAC 388-96-781 and 388-96-782; and
- (v) Actions taken under WAC 388-96-218 (2)(c) ~~((and~~
- ~~((vi) Actions taken under WAC 388-96-786)).~~

(2) The administrative review process prescribed in WAC 388-96-904 ~~((shall))~~ must not be used to contest or review unrelated or ancillary department actions, whether review is sought to obtain a ruling on the merits ~~((of a claim or to))~~, make a record for subsequent judicial review, or other purpose. If an issue is raised that is not subject to review under WAC 388-96-904, the presiding officer ~~((shall))~~ must dismiss such issue with prejudice to further review under the provisions of WAC 388-96-904, but without prejudice to other administrative or judicial review as may be provided by law. Unrelated or ancillary actions not eligible for administrative review under WAC 388-96-904 include but are not limited to:

(a) Challenges to the adequacy or validity of the public process followed by the department in proposing or making a change to the nursing facility medicaid payment rate methodology, as required by Title 42 U.S.C. Sec. 1396a (a)(13)(A) and WAC 388-96-718;

(b) Challenges to the nursing facility medicaid payment system that are based in whole or in part on federal laws, regulations, or policies;

(c) Challenges to a contractor's rate that are based in whole or in part on federal laws, regulations, or policies;

(d) Challenges to the legal validity of a statute or regulation; and

(e) Actions of the department affecting a medicaid beneficiary or provider that were not commenced by the office of rates management, aging and ~~((disability services))~~ long-term

support administration ~~((, for example, entitlement to or payment for durable medical equipment or other services))~~.

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the nursing facility medicaid payment system or ~~((wishes to))~~ bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. The contractor ~~((may))~~ must not use this section or WAC 388-96-904 for such purposes. This prohibition ~~((shall apply))~~ applies irrespective of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

NEW SECTION

WAC 388-96-915 Capital component—Square footage. (1) Allowable nursing home square footage is the external dimensions of the building utilized and licensed as a nursing home less all unallowable square footage as outlined in subsection (2) of this section. Allowable nursing home square footage includes the following:

(a) All necessary, ordinary, and reasonable space on the campus or adjacent to the campus utilized by the residents and staff of the nursing home including in administrative and support capacities; and

(b) Basements to the extent they are utilized for administrative or support functions including the storage of equipment and records.

(2) Unallowable nursing home square footage includes, but is not limited to:

(a) Courtyards or other areas not surrounded by four walls and a contiguous roof;

(b) Patios and decks; and

(c) Off-site storage space.

(3) Off-site administrative square footage is allowable to the extent it is:

(a) Allocated on the cost report, if appropriate;

(b) Not otherwise unallowable under subsection (2) of this section; and

(c) Used for administrative purposes.

(4) Off-site administrative square footage is allowable up to ten percent of the combined total allowable square footage. Any square footage over ten percent of the combined total allowable square footage is unallowable.

(5) In order to be allowable, all space must be identified on a site plan, blueprint, or county assessment identifying the gross external square footage.

NEW SECTION

WAC 388-96-916 Capital component—Facility age. (1) The average age of a facility is the actual facility age reduced for significant renovations.

(2) For the rate beginning July 1, 2016, the department must use renovations data back to 1994 as submitted on facility cost reports to determine an initial age.

(3) Beginning July 1, 2016:

(a) Facilities must all be re-aged to one year older on December 31st of each year.

(b) Facility ages must be reduced during review of the cost report if the value of the renovation completed in any calendar year exceeds two thousand dollars times the number of licensed beds. In order to calculate the new age, the cost of the renovation must be divided by the accumulated depreciation per bed in the year of the renovation to determine the equivalent number of new replacement beds. The new age for the facility is a weighted average with the replacement bed equivalents reflecting an age of zero and the existing licensed beds, minus the new bed equivalents, reflecting their age in the year of the renovation.

(4) At no time may the depreciated age be less than zero or greater than forty-four years.

NEW SECTION

WAC 388-96-917 Direct care—County wage information. (1) The department must calculate a county wide wage index each rebase year by utilizing the most recent average wage data available from the federal bureau of labor statistics for registered nurses, licensed practical nurses, and certified nursing assistants.

(2) For each county, the department must calculate an average combined wage for all three disciplines based on the percentage of total wages by discipline from the prior year cost report. Each wage must be multiplied by the relative utilization percentage for that discipline. The total of all three disciplines is the average wage in that county.

(3) The department must calculate the statewide average combined wage for all three disciplines based on the average percentage of total wages by discipline from the prior year cost report.

(4) The county index is determined by dividing the county average wage in a given county by the statewide average wage.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-96-534 Joint cost allocation disclosure (JCAD).
- WAC 388-96-540 Will the department allow the cost of an administrator-in-training?
- WAC 388-96-552 Depreciable assets.
- WAC 388-96-553 Capitalization.
- WAC 388-96-558 Depreciation expense.
- WAC 388-96-559 Cost basis of land and depreciation base.
- WAC 388-96-561 Cost basis of land and depreciation base—Donated or inherited assets.
- WAC 388-96-562 Depreciable assets—Disposed—Retired.
- WAC 388-96-564 Methods of depreciation.
- WAC 388-96-565 Lives.

- WAC 388-96-572 Handling of gains and losses upon retirement of depreciable assets—Other periods.
- WAC 388-96-574 New or replacement construction—Property tax increases.
- WAC 388-96-708 Beds removed from service under chapter 70.38 RCW, new beds approved under chapter 70.38 RCW, and beds permanently relinquished—Effect on prospective payment rate.
- WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds by means other than "banking" pursuant to chapter 70.38 RCW.
- WAC 388-96-744 How will the department set the therapy care rate and determine the median cost limit per unit of therapy?
- WAC 388-96-746 How much therapy consultant expense for each therapy type will the department allow to be added to the total allowable one-on-one therapy expense?
- WAC 388-96-747 Constructed, remodeled or expanded facilities.
- WAC 388-96-748 Financing allowance component rate allocation.
- WAC 388-96-762 Allowable land.
- WAC 388-96-767 Appraisal values.
- WAC 388-96-776 Add-ons to the property and financing allowance payment rate—Capital improvements.
- WAC 388-96-783 Certificate of capital authorization (CCA).
- WAC 388-96-784 Expense for construction interest.
- WAC 388-96-786 Pay for performance add-on.

**WSR 17-23-006
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2017-09—Filed November 2, 2017, 10:00 a.m., effective December 3, 2017]

Effective Date of Rule: Thirty-one days after filing.
Purpose: Elimination of the K-12 study, as reflected in HB 1042 (2017).
Citation of Rules Affected by this Order: Repealing WAC 284-198-001 through 284-198-055.
Statutory Authority for Adoption: RCW 48.02.060.
Other Authority: HB 1042 (2017).
Adopted under notice filed as WSR 17-19-054 on September 13, 2017.

A final cost-benefit analysis is available by contacting Stacy Middleton, P.O. Box 40258, Olympia, WA 98504, phone 360-725-9651, fax 360-586-3109, TTY 360-584-0241, email rulescoordinator@oic.wa.gov, stacy@m@oic.wa.gov.

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 11.

Number of Sections Adopted at the Request of a Non-governmental 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 11.

Date Adopted: November 2, 2017.

Mike Kreidler
Insurance Commissioner

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 284-198-001 Scope.
- WAC 284-198-005 Definitions.
- WAC 284-198-010 Acknowledgment.
- WAC 284-198-020 Survey instrument.
- WAC 284-198-025 Submission.
- WAC 284-198-030 Resubmission.
- WAC 284-198-035 Validation.
- WAC 284-198-040 Data retention.
- WAC 284-198-045 Data fields.
- WAC 284-198-050 Contact person.
- WAC 284-198-055 Health plan data needed by school districts—Association health plans.

WSR 17-23-009
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2017-10—Filed November 2, 2017, 11:18 a.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: SHB 1027, enacted in 2017, amends the surplus lines broker licensing statute to provide that the office of the insurance commissioner (OIC) will: (1) License a nonresident applicant for a surplus line broker license if the person's

resident state issues nonresident surplus line broker licenses to residents of this state, and (2) waive the examination requirement if a licensed nonresident surplus line broker moves to this state and wishes to become licensed as a resident surplus line broker and their application is received by OIC within ninety days of the cancellation of the broker's resident license in the other state. The amendments in SHB 1027 differ from the provisions currently contained in WAC 284-15-010(2). Because these RCW amendments fully set out this aspect of the licensing of nonresident surplus line brokers this subsection of the WAC is proposed to be repealed.

Citation of Rules Affected by this Order: Amending WAC 284-15-010.

Statutory Authority for Adoption: RCW 48.02.060, 48.15.015.

Adopted under notice filed as WSR 17-19-065 on September 13, 2017.

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 the Request of a Non-governmental 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: November 2, 2017.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 13-11-042, filed 5/13/13, effective 6/13/13)

WAC 284-15-010 Brokers—Surplus line brokers—Qualifications and examination. ~~((+))~~ Each applicant for a resident surplus line broker's license must take and pass the required examination, meet the additional producer licensing requirement per RCW 48.15.070 and pay the required fee prior to acting as a surplus line broker. The examination will test an applicant's qualifications and competence in all areas of surplus line insurance. Current information about testing procedures and examination dates is available on the commissioner's web site at: www.insurance.wa.gov.

~~((2) The commissioner deems that a nonresident person holding a surplus line broker's license, or the equivalent, in the applicant's home state is qualified, competent and trustworthy and, therefore, meets the minimum standards of this state for holding a surplus line broker's license. For that reason, the commissioner will waive the Washington surplus line broker's examination for a person who has and maintains a current resident surplus line broker's license, or the equivalent, in the applicant's home state.)~~

WSR 17-23-015**PERMANENT RULES****DEPARTMENT OF TRANSPORTATION**

[Filed November 3, 2017, 12:39 p.m., effective December 4, 2017]

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

Purpose: This rule edits existing language to clarify the use of flaggers within intersections, other than emergencies, as long there is a flagger present for each intersecting leg of the intersection.

Citation of Rules Affected by this Order: Amending WAC 468-95-302.

Statutory Authority for Adoption: RCW 47.36.030.

Adopted under notice filed as WSR 17-17-107 on August 21, 2017.

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 the Request of a Non-governmental 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: November 2, 2017.

Kara Larsen
Director of Risk Management
and Legal Services

AMENDATORY SECTION (Amending WSR 11-23-101, filed 11/18/11, effective 12/19/11)

WAC 468-95-302 Flagger stations. Add a new Standard to MUTCD Section 6E.08 to read:

Standard:

A single flagger shall not flag (~~(traffic within)~~) from the center of an intersection, except (~~(for)~~) when there is an emergency or when law enforcement is flagging. When flagging at an intersection there shall be a flagger controlling each intersection leg.

WSR 17-23-017**PERMANENT RULES****DEPARTMENT OF
EARLY LEARNING**

[Filed November 3, 2017, 5:18 p.m., effective December 4, 2017]

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

Purpose: Require applicants for child care subsidy benefit to certify under penalty of perjury their marital status and relationship to other parents in the household. Clarify what information DSHS verifies when processing subsidy applica-

tion, reapplications, and reported changes. When only one parent is named on a benefit application, require disclosure of the other parent's name and address or a good cause exemption in cases where household composition cannot be verified using DSHS' records or systems. Clarify that during an eligibility period, a consumer will be asked for verification for changes that may affect benefit amount or eligibility when information is not available from DSHS' records or systems. Disallow child care from occurring in the child's home when the parent/guardian is self-employed and operating a home-based business. Clarify when work schedule information and third-party verification may be required for income verification. Clarify the deadline by which an applicant must respond to a request for income verification. Specify acceptable forms of documentation for verifying an applicant's participation in qualifying activities and timelines for submission.

Citation of Rules Affected by this Order: Amending WAC 170-290-0005, 170-290-0012, 170-290-0015, 170-290-0050, and 170-290-0065.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Adopted under notice filed as WSR 17-19-120 on September 20, 2017.

Changes Other than Editing from Proposed to Adopted Version: Requirement that all applicants certify, under penalty of perjury, the location of the absent parent removed from final WAC 170-290-0005 [(1)](h). Applicants' requirement to disclose relationship of all adults to all children living in their residence changed to require applicants to disclose marital status and relationship to other parents in residence.

Final WAC 170-290-0012(2), edited to better clarify that, during a consumer's eligibility period, DSHS will request verification for changes that may affect benefit amount or eligibility when the information is not available from DSHS' records or systems.

Final WAC 170-290-0012(6), edited to better clarify DSHS' procedures for verifying household composition.

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 5, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: November 3, 2017.

Heather Moss
Director

AMENDATORY SECTION (Amending WSR 16-19-107, filed 9/21/16, effective 10/22/16)

WAC 170-290-0005 Eligibility. (1) At application and reapplication, to be eligible for WCCC, the applicant or reapplicant must:

- (a) Have parental control of one or more eligible children;
- (b) Live in the state of Washington;
- (c) Be the child's:
 - (i) Parent, either biological or adopted;
 - (ii) Stepparent;
 - (iii) Legal guardian verified by a legal or court document;
 - (iv) Adult sibling or step-sibling;
 - (v) Nephew or niece;
 - (vi) Aunt;
 - (vii) Uncle;
 - (viii) Grandparent;
 - (ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or
 - (x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;
- (d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;
- (e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;
- (f) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG) ~~(=)~~ and have resources under one million dollars per WAC 170-290-0022;
- (g) The consumer's eligibility shall end if the consumer's countable income is greater than eighty-five percent of the state median income or if resources exceed one million dollars;
- ~~((g))~~ (h) Complete the WCCC application and DSHS verification process provided in WAC 170-290-0012 regardless of other program benefits or services received;
- ~~((h))~~ (i) Effective March 1, 2018, certify under penalty of perjury, the applicant's or reapplicant's status as:
 - (i) Married;
 - (ii) Unmarried and living with the parent of any child in the household; or
 - (iii) Single parent not living with the parent of any child in the household.
- (j) Meet eligibility requirements for WCCC described in Part II of this chapter.
- (2) **Children.** To be eligible for WCCC, the child must:
 - (a) Belong to one of the following groups as defined in WAC 388-424-0001:
 - (i) A U.S. citizen;
 - (ii) A U.S. national;
 - (iii) A qualified alien; or
 - (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;
 - (b) Live in Washington state, and be:
 - (i) Less than thirteen years of age; or
 - (ii) Less than nineteen years of age, and:
 - (A) Have a verified special need, according WAC 170-290-0220; or

- (B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 16-19-107, filed 9/21/16, effective 10/22/16)

WAC 170-290-0012 Verifying consumers' information. (1) ~~When a consumer ((must provide all required information to DSHS to determine eligibility when the consumer)) initially applies or reapplies for benefits, DSHS requires the consumer to provide verification of child care subsidy eligibility if the department is unable to verify through agency records or systems.~~

~~(2) ((All verification that is provided to)) During the consumer's eligibility period, DSHS will request verification for changes that may affect the consumer's benefit amount or eligibility when the department is unable to verify through agency records or systems if:~~

- ~~(a) The consumer reports a change;~~
- ~~(b) DSHS discovers the consumer's circumstances have changed; or~~
- ~~(c) The information DSHS has is questionable or outdated.~~
- ~~(3) DSHS notifies the consumer when verification is required.~~

~~(4) DSHS may accept verification to support the consumer's statement of circumstances. The verification the consumer gives DSHS must:~~

- ~~(a) Clearly relate to what the ((information DSHS is requesting)) consumer is trying to provide;~~
- ~~(b) Be from a reliable source; and~~
- ~~(c) Be accurate, complete, and consistent.~~
- ~~((3) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may))~~ (5) When the consumer gives DSHS questionable verification DSHS will:

- ~~(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or~~
- ~~(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. ((See)) Consumer's rights are found in WAC 170-290-0025 ((9)).~~

~~((4) The verification that the consumer gives to))~~ (6) At the time of application, reapplication, or when changes are reported, DSHS ((includes, but is not limited to,)) will verify the following:

- ~~((a) A current WorkFirst individual responsibility plan (IRP) for consumers receiving TANF;~~
- ~~(b) Employer name, address, and phone number;~~
- ~~(c) State business registration and license, if self-employed;~~
- ~~(d) Hourly wage or salary;~~
- ~~(e) Either the:~~
 - ~~(i) Gross income for the last three months;~~
 - ~~(ii) Self attestation of anticipated wages for new employment and third party verification of the wages within sixty days of the date DSHS approved the consumer's application or reapplication for WCCC benefits;~~

(iii) Federal income tax return for the preceding calendar year; or

(iv) DSHS employment verification form;

(f) Monthly unearned income the household receives, such as supplemental security income (SSI) benefits or child support. Child support payment amounts are verified as follows:

(i) For applicants or consumers who are not receiving DSHS division of child support services, the amount as shown on a current court or administrative order;

(ii) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(iii) For applicants or consumers who have an informal verbal or written child support agreement, the amount as verified by the written agreement signed by the noncustodial parent (NCP);

(iv) For applicants or consumers who cannot provide a written agreement signed by the NCP, the amount received for child support verified by a written statement from the consumer that documents why they cannot provide the statement from the NCP.

(g) If the other parent: (a) The consumer's Washington residency;

(b) That the consumer has parental control of an eligible child per WAC 170-290-0005;

(c) The consumer's household composition:

(i) DSHS will compare the consumer's statement of household composition against records for that consumer under TANF, food assistance, medical assistance, and child support services;

(ii) If the consumer's statement of household composition is questionable when compared against records for that consumer under TANF, food assistance, medical assistance, and child support services, DSHS may take the action described in subsection (5) of this section; and

(iii) Effective March 1, 2018, if the consumer is the only parent named on the benefits application and DSHS is unable to verify household composition in agency records under TANF, food assistance, medical assistance, or child support services, then the consumer must:

(A) Provide the name and address of the other parent, or indicate, under penalty of perjury, that the other parent's identity and address are unknown to the applicant or that providing this information will likely result in serious physical or emotional harm to the consumer or anyone residing with the consumer; and

(B) Indicate under penalty of perjury whether the parent is present or absent in the household;

(d) Whether the consumer is participating in an approved activity, including the consumer's income and schedule from the approved activity;

(e) Whether the consumer complies with applicable eligibility rules in WAC 170-290-0020;

(f) Other income and countable resources under WAC 170-290-0005;

(g) If any other parent, as determined in WAC 170-290-0015, is in the household, the same information ((for them)) in (a) through (g) of this subsection is verified for that parent; and

(h) ((Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.

(5)) The citizenship or alien status of a child receiving child care subsidies.

(7) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

((6)) (8) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.

((7)) (9) If a consumer does not provide all of the verification requested within thirty days from the application date, DSHS will determine ((if a consumer is eligible)) the consumer's eligibility based on the information already available to DSHS. DSHS shall deny the application or reapplication if the available information does not confirm eligibility.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0015 ((Eligibility—)) Determining family size. (1) DSHS determines a consumer's family size as follows:

(((1) If a consumer's family includes:	DSHS counts the following individuals as part of the family for WCCC eligibility:
(a) A single parent, including a minor parent living independently.	The consumer and the consumer's children.
(b) Unmarried parents who have at least one mutual child.	Both parents and all their children living in the household.
(c) Unmarried parents with no mutual children.	Unmarried parents and their respective children living in the household as separate WCCC families.
(d) Married parents.	Both parents and all their children living in the household.
(e) Parents who are undocumented aliens as defined in WAC 388-424-0001.	Parents and children, documented and undocumented, as long as the child needing care belongs to one of the following groups as defined in WAC 388-414-0001: (i) A U.S. citizen; (ii) A U.S. national; (iii) A qualified alien; or

	<p>(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.</p> <p>All other family rules in this section apply.</p>
<p>(f) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.</p>	<p>The children only (the children and their income are counted).</p>
<p>(g) A minor parent with children and lives with a parent/guardian.</p>	<p>Only the minor parent and their children.</p>
<p>(h) A parent who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.</p>	<p>The consumer, the absent parent, and the children. Subsection (1)(b) and (d) of this section apply.</p>
<p>(i) A parent who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.</p>	<p>The consumer, the absent parent, and the children. Subsection (1)(b) and (d) of this section apply as well as WAC 170-290-0020.</p>
<p>(j) An incarcerated parent.</p>	<p>The incarcerated individual is not part of the household count in determining income and eligibility. DSHS counts all remaining household members. All other family rules in this section apply.</p>
<p>(2) If the consumer's household includes:</p>	<p>DSHS counts the following individuals as part of the family for WCCC eligibility:</p>
<p>(a) Eighteen year old siblings of the children who require care and are enrolled in high school or general equivalency diploma (GED) program.</p>	<p>The eighteen year olds (unless they are a parent themselves), until they turn nineteen or complete high school/GED, whichever comes first. All other family rules in this section apply.</p>

<p>(b) Siblings of the children requiring care who are up to twenty-one years of age and who are participating in an approved program through the school district's special education department under RCW 28A.155.020.</p>	<p>The individual participating in an approved program through RCW 28A.155.020 up to twenty-one years of age (unless they are a parent themselves). All other family rules in this section apply.)</p>
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(a) For a single parent, including a minor parent living independently, DSHS counts the consumer and the consumer's children;

(b) For unmarried parents who have at least one mutual child, DSHS counts both parents and all of their children living in the household;

(c) Unmarried parents who have no mutual children are counted as separate WCCC families, the unmarried parents and their respective children living in the household;

(d) For married parents, DSHS counts both parents and all of their children living in the household;

(e) For parents who are undocumented aliens as defined in WAC 388-424-0001, DSHS counts the parents and children, documented and undocumented, and all other family rules in this section apply. Children needing care must meet citizenship requirements described in WAC 170-290-0005;

(f) For a legal guardian verified by a legal or court document, adult sibling or step-sibling, nephew, niece, aunt, uncle, grandparent, any of these relatives with the prefix "great," such as a "great-nephew," or an in loco parentis custodian who is not related to the child as described in WAC 170-290-0005, DSHS counts only the children and only the children's income is counted;

(g) For a parent who is out of the household because of employer requirements, such as training or military service, and expected to return to the household, DSHS counts the consumer, the absent parent, and the children;

(h) For a parent who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household, DSHS counts the consumer, the absent parent, and the children. WAC 170-290-0020 and all other family rules in this section apply;

(i) For a parent who is out of the country and waiting for legal reentry in to the United States, DSHS counts only the consumer and children residing in the United States and all other family rules in this section apply;

(j) An incarcerated parent is not part of the household count for determining income and eligibility. DSHS counts the remaining household members using all other family rules in this section; and

(k) For a parent incarcerated at a Washington state correctional facility whose child lives with them at the facility, DSHS counts the parent and child as their own household.

(2) In addition to family members described in subsection (1)(a) through (k) of this section, siblings of the child needing care, unless they are parents themselves, who meet the following criteria are counted by DSHS as part of the family for WCCC eligibility:

(a) Eighteen year old siblings who are enrolled in high school or a general equivalency diploma (GED) program

until turning nineteen or completing high school/GED, whichever comes first; and

(b) Siblings up to twenty-one years of age who are participating in an approved program through a school district's special education department under RCW 28A.155.020.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0065 Calculation of income. DSHS uses a consumer's countable income when determining income eligibility and copayment. A consumer's countable income is the sum of all income listed in WAC 170-290-0060 minus any child support paid out through a court order, division of child support administrative order, or tribal government order.

(1) To determine a consumer's income, DSHS either:

(a) Calculates an average monthly income by:

(i) Determining the number of months, weeks or pay periods it took the consumer's WCCC household to earn the income; and

(ii) Dividing the income by the same number of months, weeks or pay periods; or

(b) When the consumer begins new employment and has less than three months of wages, DSHS uses the best available estimate of the consumer's WCCC household's current income:

(i) As verified by the consumer's employer; or

(ii) As provided by the consumer through a verbal or written statement documenting the new employment at the time of application, reapplication or change reporting, and wage verification within ~~((the first))~~ sixty days of ~~((new or changed employment))~~ DSHS request.

(2) If a consumer receives a lump sum payment (such as money from the sale of property or back child support payment) in the month of application or during the consumer's WCCC eligibility:

(a) DSHS calculates a monthly amount by dividing the lump sum payment by twelve;

(b) DSHS adds the monthly amount to the consumer's expected average monthly income:

(i) For the month it was received; and

(ii) For the remaining months of the current eligibility period; and

(c) To remain eligible for WCCC the consumer must meet WCCC income guidelines after the lump sum payment is applied.

AMENDATORY SECTION (Amending WSR 16-19-107, filed 9/21/16, effective 10/22/16)

WAC 170-290-0050 Additional requirements for self-employed WCCC consumers. (1) **Self-employment generally.** To be considered self-employed, a WCCC consumer must:

(a) Earn income directly from the consumer's trade or business, not from wages paid by an employer;

(b) Be responsible to pay the consumer's self-employment Social Security and federal withholding taxes;

(c) Have a work schedule, activities or services that are not controlled in an employee-employer relationship;

(d) Participate directly in the production of goods or services that generate the consumer's income(~~and~~

~~(e) At application and reapplication, work outside of the home the amount of hours for which the consumer requests WCCC benefits. If a consumer's self-employment activities are split between the home and outside of the home, only self-employment and other approved activities outside of the home will be eligible for child care benefits)).~~

(2) Child care may not occur in the home of a consumer who operates a home-based business.

(3) Self-employed consumers receiving TANF. If a consumer receives TANF and is also self-employed, he or she may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period ~~((for self-employment activities outside of the consumer's home)).~~

(a) The consumer must have an approved self-employment plan in the consumer's IRP under WAC 388-310-1700;

(b) The amount of WCCC benefits a consumer receives for self-employment is equal to the number of hours in the consumer's approved plan; and

(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.

~~((3))~~ (4) Self-employed consumers not receiving TANF. If a consumer does not receive TANF and requests WCCC benefits for the consumer's self-employment, the consumer may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period ~~((for self-employment activities outside of the consumer's home)).~~

(a) A consumer who does not receive TANF cash assistance and requests WCCC benefits for self-employment must provide DSHS with the consumer's:

(i) Washington state business license, or a tribal, county, or city business or occupation license, as applicable;

(ii) Uniform business identification (UBI) number for the state of Washington, or, for self-employment in bordering states, the registration or filing number;

(iii) Completed self-employment plan that is written, signed, dated and includes, but is not limited to, a description of the self-employment business, proposed days and hours of work activity including time needed for transportation and the location of work activity;

(iv) Projected profit and loss statement, ~~((projected profit and loss statement))~~ if starting a new business; and

(v) For established businesses, either federal self-employment tax reporting forms for the most current reporting year ~~((or DSHS self-employment income and expense declaration form))~~ or a profit and loss statement.

(b) At application and reapplication, the first six consecutive months of starting a new self-employment business, the number of hours a consumer is eligible to receive is based on the consumer's report of how many hours are needed, up to sixteen hours per day. A consumer is eligible to receive this provision only once during the consumer's lifetime and must use the benefit provided by this provision within the consumer's authorization period.

(c) At application and reapplication, DSHS determines the number of care hours the consumer is eligible to receive after receiving WCCC self-employment benefits for six consecutive months as provided in (b) of this subsection by:

(i) Dividing the consumer's gross monthly self-employment income by the federal or state minimum wage, whichever is lower, to determine the average monthly hours of care needed by the consumer; and

(ii) Adding the consumer's additional approved employment, education, training, or travel to the total approved self-employment hours.

(d) If both parents in a two-parent family are self-employed, at the same or a different business, each parent must ~~((report the parent's own self-employment earnings and))~~ provide a self-employment plan and self-employment income verification. If the requested verification is not provided, then WAC 170-290-0012 applies to determining eligibility.

WSR 17-23-019
PERMANENT RULES
SEATTLE COLLEGES

[Filed November 6, 2017, 12:46 p.m., effective December 7, 2017]

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

Purpose: Repeal outdated WAC, leaving internal sexual harassment policy and procedure.

Citation of Rules Affected by this Order: Repealing 7 [WAC 132F-419-010, 132F-419-020, 132F-419-030, 132F-419-040, 132F-419-050, and 132F-419-070].

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Adopted under notice filed as WSR 17-12-109 on June 7, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 7.

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: November 6, 2017.

Shouan Pan
Chancellor

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132F-419-010 Sexual harassment policy.

WAC 132F-419-020 Procedural guidelines.

WAC 132F-419-030 Informal complaint procedures.

WAC 132F-419-040 Formal complaint procedures.

WAC 132F-419-050 Nondistrict options.

WAC 132F-419-060 Appropriate disciplinary action.

WAC 132F-419-070 Repeated offenses.

WSR 17-23-020
PERMANENT RULES
SEATTLE COLLEGES

[Filed November 6, 2017, 12:47 p.m., effective December 7, 2017]

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

Purpose: Adopt new WAC, setting forth protocol and guidelines on refund policies.

Citation of Rules Affected by this Order: New 7 [WAC 132F-605-005, 132F-605-010, 132F-605-020, 132F-605-030, 132F-605-040, 132F-605-050, and 132F-605-070].

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Adopted under notice filed as WSR 17-12-110 on June 7, 2017.

Changes Other than Editing from Proposed to Adopted Version: Clarification of "fee" in WAC 132F-605-005, second paragraph, changed to "administrative fee."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 7, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 7, 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: November 6, 2017.

Shouan Pan
Chancellor

Chapter 132F-605 WAC

REFUND OF TUITION AND OTHER FEES

NEW SECTION

WAC 132F-605-005 Refunds. Tuition and fees (except those which are nonrefundable) will be refunded if complete or partial withdrawal from classes is accomplished within the first twenty calendar days of the regular college quarter following the beginning day of the quarter.

Refunds, except for self-support programs, e.g., continuing education, intensive English courses, will be made in accordance with the schedule below, subject to an adminis-

trative fee. In those instances where the fee subject to refund is less than the administrative fee, the minimum forfeiture will be reduced to that amount. No charge is made for dropping classes when no refund is involved. At least two weeks must elapse between payment and refund of fees.

International students who attend a college within the Seattle College District on an International Student Visa and make advance payments must be enrolled at the college in the quarter for which they are requesting a refund and must provide documentation establishing extenuating circumstances, such as visa denial or medical reasons.

Refunds of financial aid recipients will be refunded to the appropriate financial aid account as required by federal and state regulations, including those students who are dismissed for disciplinary reasons.

NEW SECTION

WAC 132F-605-010 Refund schedule—General. Withdrawal resulting from classes being canceled by the district, one hundred percent.

Before the first day of the college quarter, one hundred percent.

During the first five instructional days of the college quarter (less administrative fee), one hundred percent.

From the sixth instructional day through the twentieth calendar day of the college quarter, fifty percent.

After the first twenty calendar days of the college quarter, zero percent.

NEW SECTION

WAC 132F-605-020 Refund schedule—Intensive English institute. Withdrawal prior to first class, one hundred percent.

During the first five calendar days, eighty percent.

From the sixth through the fourteenth calendar day, fifty percent.

After the fourteenth calendar day, zero percent.

NEW SECTION

WAC 132F-605-030 Refund schedule—Continuing education. Two business days prior to first day of class, one hundred percent, less administrative fee.

Within two business days of start of class/after class begins, zero percent.

NEW SECTION

WAC 132F-605-040 Dismissal for disciplinary reasons. No refund will be given beyond the stated refund deadlines for a student who is dismissed or suspended from the district for disciplinary reasons.

NEW SECTION

WAC 132F-605-050 Classes not following regular college quarter calendar. Refunds for summer quarter, or other short courses/programs that do not follow the regular

college calendar, will be applied on a prorated basis to the specific class' shortened schedule.

NEW SECTION

WAC 132F-605-070 Parking fees. Parking fees will be refunded only in the case of one hundred percent withdrawal from the college and surrender of the parking permit, in which case the fees will be refunded on the same basis as tuition.

WSR 17-23-024

PERMANENT RULES CENTRALIA COLLEGE

[Filed November 6, 2017, 2:26 p.m., effective December 7, 2017]

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

Purpose: The passage of EHB 1595 authorizes state agencies to establish the costs of public records requests. The rule is necessary to adopt and implement a schedule of default fees.

Citation of Rules Affected by this Order: New WAC 132L-276-085 Charges for public records; and repealing WAC 132L-276-090 Copying.

Statutory Authority for Adoption: RCW 46.56.120 and EHB 1595.

Adopted under notice filed as WSR 17-19-097 on September 19, 2017.

A final cost-benefit analysis is available by contacting Julie D. Huss, Vice President, Human Resources and Legal Affairs, 600 Centralia College Boulevard, Centralia, WA 98531, phone 360-623-8474, fax 360-330-7103, email julie.huss@centralia.edu, web site www.centralia.edu.

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 0, Repealed 1.

Number of Sections Adopted at the Request of a Non-governmental 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: October 31, 2017.

Dr. Bob Mohrbacher
President

NEW SECTION

WAC 132L-276-085 Charges for public records. Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce

college resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records. Instead of calculating the actual costs of charges for records, the college president or designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the college charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b). The college may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor. The college may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132L-276-090 Copying.

WSR 17-23-033
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING

[Filed November 7, 2017, 3:54 p.m., effective December 8, 2017]

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

Purpose: Clarify that all overpayments, regardless of cause, must be overpaid [repaid]. Define fraud and intentional program violations as those terms relate to providers participating in working connections child care and seasonal child care subsidy programs. Establish a progressive disqualification process for repeat intentional program violations. Clarify sanctions that may result from intentional program violations.

Citation of Rules Affected by this Order: New WAC 170-290-0277, 170-290-0279 and 170-290-3857; and amending WAC 170-290-0003, 170-290-0266, 170-290-0268, 170-290-0271, 170-290-0275, and 170-290-0280.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Other Authority: SSB 5883, Section 615.

Adopted under notice filed as WSR 17-19-112 on September 20, 2017.

Changes Other than Editing from Proposed to Adopted Version: March 1, 2018, effective date inserted in final WAC 170-290-0277 (1)(d).

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 6, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: November 7, 2017.

Heather Moss
Director

AMENDATORY SECTION (Amending WSR 17-12-013, filed 5/26/17, effective 6/26/17)

WAC 170-290-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Able" means being physically and mentally capable of caring for a child in a responsible manner.

"Authorization" means the transaction created by DSHS which allows the provider the ability to claim payment during a certification period. The transaction may be adjusted based on the family need.

"Available" means being free to provide care when not participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed.

"Benefit" means a regular payment made by a government agency to a person qualified to receive it.

"Calendar year" means those dates between and including January 1st and December 31st.

"Capacity" means the maximum number of children the licensee is authorized by the department to have in care at any given time.

"Collective bargaining agreement" or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

"Consumer" means the person receiving:

(a) WCCC benefits as described in part II of this chapter;

or

(b) SCC benefits as described in part III of this chapter.

"Copayment" means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care, whether provided under a voucher or contract, each month.

"Days" means calendar days unless otherwise specified.

"DEL" means the department of early learning.

"DSHS" means the department of social and health services.

"Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

"Eligibility" means that a consumer has met all of the requirements of:

- (a) Part II of this chapter to receive WCCC program subsidies; or
- (b) Part III of this chapter to receive SCC program subsidies.

"Employment" or **"work"** means engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States. This includes unsubsidized employment, as verified by DSHS, and subsidized employment, such as:

- (a) Working in a federal or state paid work study program; or
- (b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

"Existing child care provider" means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefits to himself or herself or another person. See RCW 74.04.004.

"Homeless" means homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987.

"In-home/relative provider" or **"license-exempt provider,"** referred to in the collective bargaining agreement as **"family, friends and neighbors provider"** or **"FFN provider,"** means a provider who meets the requirements in WAC 170-290-0130 through 170-290-0167.

"In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

"Intentional" means the likelihood of willfulness or done on purpose.

"New child care provider" means a licensed or certified provider who did not receive a state subsidy payment between July 1, 2015, and June 30, 2016.

"Night shift" means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"Nonschool age child" means a child who is six years of age or younger and is not enrolled in public or private school.

"Phase out period" means a three-month eligibility period a consumer may be eligible for at reapplication when the consumer's household income is greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG.

"Preschool age child" means a child age thirty months through six years of age who is not attending kindergarten or elementary school.

"Private school" means a private school approved by the state under chapter 28A.195 RCW.

"Program violation" means an act contrary to program rules and regulations and includes failure to adhere to program requirements.

"Sanction" means deterrent action imposed by the department to address a program violation finding.

"SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

"School age child" means a child who is between five years of age through twelve years of age and who is attending public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Seasonally available agricultural related work" means work that is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

"Self-employment" means engaging in any legal income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States, as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

"Suspected fraud" means evidence supporting a finding of fraud. Suspected fraud can result in a criminal investigation by law enforcement.

"Unintentional" means not done willfully or on purpose.

"Waiting list" means a list of applicants or reapplicants eligible to receive subsidy benefits but funding is not available.

"WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining subsidy for child care.

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0266 Payment discrepancies—Generally. (1) Payment discrepancies include both underpayments and overpayments.

(2) For ~~((providers or))~~ consumers not covered under WAC 170-290-0267 through 170-290-0275, payment discrepancies are subject to chapter 388-410 WAC.

(3) For providers covered under the collective bargaining agreement, all other payment discrepancy issues are covered under WAC 170-290-0275 and 170-290-0277.

(4) For all providers, payment discrepancies resulting from program violations or suspected fraud are covered under WAC 170-290-0277 and 170-290-0279.

AMENDATORY SECTION (Amending WSR 17-12-035, filed 5/31/17, effective 7/1/17)

WAC 170-290-0268 Payment discrepancies—Provider overpayments. (1) An overpayment occurs when a provider receives payment that is more than the provider is eligible to receive. Provider overpayments are established when that provider:

- (a) Bills and receives payment for services not provided;

(b) Bills without attendance records that support their billing;

(c) Bills and receives payment for more than they are eligible to bill;

(d) Routinely provides care in a location other than what was approved at the time of authorization;

(e) With respect to license-exempt in-home/relative providers, commonly known as "family, friends, and neighbor" providers, bills the state for more than six children at one time during the same hours of care; or

~~((e))~~ (f) With respect to licensed or certified providers:

(i) Bills the state for more than the number of children they have in their licensed capacity; or

(ii) Is caring for a WCCC child outside their licensed allowable age range without a DEL-approved exception; or

~~((f))~~ (g) With respect to certified providers caring for children in a state bordering Washington:

(i) Is determined not to be in compliance with their state's licensing regulations; or

(ii) Fails to notify DSHS within ten days of any suspension, revocation, or change to their license.

(2) DEL or DSHS ~~((may))~~ will request documentation from a provider when preparing to establish an overpayment. The provider has ~~((fourteen))~~ twenty-eight consecutive calendar days from the date of the written request to supply any requested documentation. ~~((Beginning July 1, 2017, or upon ratification of the 2017-19 collective bargaining agreement with SEIU 925, whichever occurs later, the records must be supplied within twenty-eight consecutive calendar days of the date of a written request from either department.))~~

(3) ~~((Providers are))~~ A provider is required to repay any payments ~~((that))~~ which they were not eligible to receive.

(4) ~~((If an))~~ Provider overpayments defined in subsection (1) of this section are deemed as program violations as described in WAC 170-290-0277.

(5) A provider is required to repay any overpayment ~~((was))~~ made through a departmental error ~~((; the provider is still required to repay that amount)).~~

AMENDATORY SECTION (Amending WSR 16-19-107, filed 9/21/16, effective 10/22/16)

WAC 170-290-0271 Payment discrepancies—Consumer ((overpayments)). (1) DSHS establishes overpayments for past or current consumers when the consumer:

(a) Received benefits ~~((when))~~ in an amount greater than the consumer was ~~((not))~~ eligible to receive;

(b) ~~((Was))~~ Is determined eligible at application or reapplication based on the consumer's participation in an approved activity and used benefits ~~((while never participating)), but never participated~~ in said activity;

(c) Failed to report changes under the requirements of WAC 170-290-0031 to DSHS ~~((resulting))~~ which result in an error in determining eligibility, amount of care authorized, or copayment;

(d) Used a provider ~~((that was not eligible per))~~ who did not meet the eligibility requirements under WAC 170-290-0125;

(e) Received benefits for a child who was not eligible per WAC 170-290-0005, 170-290-0015 or 170-290-0020; or

~~((Failed to enter their approved activity at the end of the fourteen-day wait period;~~

~~((g)) Failed to have TANF approved and enter an approved WorkFirst activity; or~~

~~((h))~~ Failed to return, by the sixtieth day, the requested income verification of new employment as provided in WAC 170-290-0012.

(2) DEL or DSHS may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.

(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.

(5) If a consumer is not eligible under WAC 170-290-0030 through 170-290-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment, including any absent days.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0275 Payment discrepancies—Providers ((covered under collective bargaining)). (1) This section applies to ~~((any provider covered under the collective bargaining agreement))~~ all child care providers.

(2) For in-home/relative and licensed family home child care providers, disputes regarding underpayments ~~((shall be))~~ are grievable.

(3) ~~((Beginning July 1, 2007, there are different time frames for how far back a))~~ Payment ((discrepancy)) discrepancies may be corrected ~~((The time frames, as provided in this subsection are based on))~~ based on time frames for payment. Correction of payment discrepancies depends on the following circumstances:

(a) ~~((When services were provided;~~

(b) When the request for the underpayment was made; and

(c) The type of provider: Family home or in-home/relative provider.

~~((4) Family home and in-home/relative))~~ Providers must submit a ((claim)) billing invoice for payment ((no later than)) within twelve months ~~((after))~~ of the date of service. ~~((Submitting a claim for payment" means turning the original invoice in to DSHS for services no later than twelve months after the date of service.))~~ Any invoice submitted more than twelve months from date of service will not be processed.

(b) If the ~~((claim))~~ billing invoice for payment is made within the twelve-month period, the time limits for correcting payment errors are:

~~((a))~~ (i) Two years back if the error is on rates paid by age ~~((and/or))~~ or region, unless the error is discovered by a federal audit((-This means)), in which case the provider has up to ~~((two years))~~ twenty-four months after the date of service to ask for a corrected payment; or

~~((b))~~ (ii) Three years back if the error was for any other reason, including ~~((those))~~ an error discovered by a federal audit ~~((This means)), in which case~~ the provider has up to

three years after the date of service to ask for a corrected payment.

PROGRAM VIOLATIONS AND SUSPECTED FRAUD

NEW SECTION

WAC 170-290-0277 Provider program violations and suspected fraud. Eligible child care providers described in WAC 170-290-0125 must comply with all provider responsibilities listed in WAC 170-290-0034. Failure to comply causing a provider overpayment will result in a program violation finding and may cause the agency to impose sanctions.

(1) Administrative errors are payment discrepancies which result from a departmental mistake. Provider overpayments caused by administrative error still require repayment of ineligible amounts. Administrative errors will not result in a finding of a program violation.

(2) An unintentional program violation is an overpayment resulting from a provider's error and not caused with willful knowledge.

(a) An unintentional program violation can include a provider's unfamiliarity with program rules and requirements.

(b) Any unintentional provider error resulting in an overpayment will result in department consultation with the provider.

(c) The department tracks all unintentional program violations in order to identify program improvement areas.

(d) Unintentional program violations require provider repayment of ineligible funds.

(3) An intentional program violation is an overpayment caused by a provider's willful failure to comply with program rules.

(a) Any repeated misrepresentation of invoices or other information submitted to the department or failure to submit documentation upon request is an intentional program violation.

(b) If a provider has been consulted by the department for billing concerns and overpayment but then continues to have overpayment findings, then the department will impose sanctions as listed in WAC 170-290-0279.

(c) Overpayments caused by intentional program violations require provider repayment of ineligible funds.

(d) Beginning March 1, 2018, all intentional program violations will be cited by the department, and providers with more than three instances of intentional program violations will be subject to review for program ineligibility.

(i) The department has discretion to impose additional sanctions if a provider has more than three instances of intentional program violations.

(ii) As per WAC 170-290-0280 and 170-290-0285, a provider can dispute the department's finding of program ineligibility.

(4) Suspected fraud is a departmental determination resulting in referral to the office of fraud and accountability (OFA) at the department of social and health services (DSHS).

(a) Program fraud is defined in RCW 74.04.004. Program staff at the department of early learning and DSHS do not criminally investigate fraud. OFA conducts criminal investigations and pursues prosecution of program fraud.

(b) Departmental program staff will identify instances of suspected fraud when facts available to the department indicate the provider willfully violated program rules. This includes repeated instances of misrepresentation.

(c) Program staff will not inform the provider when suspected fraud is referred to OFA.

(d) Providers convicted for program fraud are permanently barred from future participation in the program as a child care provider or consumer.

NEW SECTION

WAC 170-290-0279 Program violation sanctions. (1) The department will inform and consult child care providers when intentional and unintentional program violations result in provider overpayments.

(2) Sanctions are imposed to ensure providers comply with program rules and to mitigate repeat violations which result in overpayments. Provider sanctions may include:

(a) Submission of corrected information;

(b) Review of child care program rules and publications;

or

(c) Any other provider action which conveys the provider's compliance with program rules.

(3) Providers with at least three intentional program violations will be subject to review for child care subsidy program ineligibility. See WAC 170-290-0277 (3)(d).

AMENDATORY SECTION (Amending WSR 16-09-059, filed 4/15/16, effective 5/16/16)

WAC 170-290-0280 Right to request an administrative hearing. (1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits.

(2) (~~Licensed or certified~~) Child care providers (~~or in-home/relative providers~~) may request hearings under chapter 388-02 WAC only for WCCC overpayments. A provider's burden of proof is a preponderance of the evidence.

(3) To request a hearing, a consumer (~~or the licensed/certified provider~~) or (~~in-home/relative~~) provider:

(a) Contacts the DSHS office which sent them the notice;

or

(b) Writes to the office of administrative hearings, P.O. Box 42489, Olympia, WA 98504-2489; and

(c) Makes the request for a hearing within:

(i) Ninety days of the date a decision is received for consumers; or

(ii) Twenty-eight days of the date a decision is received for providers.

(4) The office of administrative hearings administrative law judge enters initial or final orders as provided in WAC 388-02-0217. Initial orders may be appealed to a DSHS review judge under chapter 388-02 WAC.

(5) To request a hearing under the seasonal child care program, see WAC 170-290-3860 and 170-290-3865.

NEW SECTION

WAC 170-290-3857 Program violations and suspected fraud. WAC 170-290-0277 and 170-290-0279 apply to the seasonal child care program.

WSR 17-23-039
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed November 8, 2017, 10:14 a.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: SB 5118 was signed into law that increases the personal needs allowance (PNA) based on the Social Security cost-of-living adjustment. This adjustment is subject to legislative funding. The agency adjusted the PNAs accordingly and moved them into new WAC 182-513-1105, to be kept together.

Citation of Rules Affected by this Order: New WAC 182-513-1105; amending WAC 182-513-1205, 182-513-1215, 182-513-1225, 182-513-1380, 182-514-0263, 182-515-1507, 182-515-1509, 182-515-1512, and 182-515-1514.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, SB 5118, 65th legislature, 2017 regular session.

Adopted under notice filed as WSR 17-20-103 on October 4, 2017.

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 the Request of a Non-governmental 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 9, 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 9, Repealed 0.

Date Adopted: November 8, 2017.

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-513-1105 Personal needs allowance (PNA) and room and board standards in a medical institution and alternate living facility (ALF). (1) This section describes the personal needs allowance (PNA), which is an amount set aside from a client's income that is intended for personal needs, and the room and board standard.

(2) The PNA in a state veteran's nursing facility:

(a) Is \$70 for a veteran without a spouse or dependent children receiving a needs-based veteran's pension in excess of \$90;

(b) Is \$70 for a veteran's surviving spouse with no dependent children receiving a needs-based veteran's pension in excess of \$90; or

(c) Is \$160 for a client who does not receive a needs-based veteran's pension.

(3) The PNA in a medical institution for clients receiving aged, blind, or disabled (ABD) cash assistance or temporary assistance for needy families (TANF) cash assistance is the client's personal and incidental (CPI) cash payment based on residing in a medical institution, which is \$41.62.

(4) The PNA in an alternate living facility (ALF) for clients receiving ABD cash assistance or TANF cash assistance is the CPI based on residing in an ALF that is not an adult family home, which is \$38.84.

(5) The PNA for clients not described in subsections (2), (3), and (4) of this section:

(a) Is \$57.28 for clients who reside in a medical institution; or

(b) Is \$62.79 for clients who reside in an ALF.

(6) Effective January 1, 2018, and each year thereafter, the amount of the PNA in subsection (5) of this section may be adjusted by the percentage of the cost-of-living adjustment (COLA) for old-age, survivors, and disability social security benefits as published by the federal Social Security Administration. This adjustment is subject to state legislative funding.

(7) The room and board standard in an ALF used by home and community services (HCS) and the developmental disabilities administration (DDA) is based on the federal benefit rate (FBR) minus the current PNA as described under subsection (5)(b) of this section.

(8) The current PNA and room and board standards used in long-term services and supports are published under the institutional standards on the Washington apple health (medicaid) income and resource standards chart located at www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1205 Determining eligibility for non-institutional coverage in an alternate living facility (ALF).

(1) This section describes the eligibility determination for noninstitutional coverage for a ~~((person))~~ client who lives in a department-contracted alternate living facility (ALF) defined under WAC 182-513-1100.

(2) The eligibility criteria for noninstitutional Washington apple health (medicaid) coverage in an ALF follows SSI-related rules under WAC 182-512-0050 through 182-512-0960, with the exception of the higher income standard under subsection (3) of this section.

(3) A ~~((person))~~ client is eligible for noninstitutional coverage under the categorically needy (CN) program if the ~~((person's))~~ client's monthly income after allowable exclusions under chapter 182-512 WAC:

(a) Does not exceed the special income level (SIL) defined under WAC 182-513-1100; and

(b) Is less than or equal to the ~~((person's))~~ client's assessed state rate at a department-contracted facility. To determine the CN standard: $((y \times 31) + \$38.84)$, where "y" is

the state daily rate. \$38.84 is based on the cash payment standard for a ~~((person))~~ client living in an ALF setting under WAC 388-478-0006.

(4) A ~~((person))~~ client is eligible for noninstitutional coverage under the medically needy (MN) program if the ~~((person's))~~ client's monthly income after allowable exclusions under chapter 182-512 WAC is less than or equal to the ~~((person's))~~ client's private rate at a department-contracted facility. To determine the MN standard: $(z \times 31) + \$38.84$, where "z" is the facility's private daily rate. To determine MN spenddown liability, see chapter 182-519 WAC.

(5) For both CN and MN coverage, a ~~((person's))~~ client's countable resources cannot exceed the standard under WAC 182-512-0010.

(6) The agency or ~~((its))~~ the agency's designee approves CN noninstitutional coverage for twelve months.

(7) The agency or ~~((its))~~ the agency's designee approves MN noninstitutional coverage for a period of months ~~((under chapter 182-504 WAC))~~ described in WAC 182-504-0020 for an SSI-related ~~((person))~~ client, provided the ~~((person))~~ client satisfies any spenddown liability under chapter 182-519 WAC.

(8) ~~((People))~~ Clients who receive medicaid personal care (MPC) or community first choice (CFC) pay all of their income to the ALF except a personal needs allowance ~~((of \$62.79))~~ under WAC 182-513-1105.

(9) A ~~((person))~~ client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the payment under this subsection.

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1215 Community first choice (CFC)—Eligibility. (1) ~~((An applicant))~~ A client who is determined functionally eligible for community first choice (CFC) services under WAC 388-106-0270 through 388-106-0295 is financially eligible to receive CFC services if the ~~((applicant))~~ client is:

(a) Eligible for a noninstitutional Washington apple health (medicaid) program which provides categorically needy (CN) or alternative benefits plan (ABP) scope of care;

(b) A spousal impoverishment protections institutional (SIPI) spouse under WAC 182-513-1220; or

(c) Determined eligible for a home and community based (HCB) waiver program under chapter 182-515 WAC.

(2) ~~((An applicant))~~ A client whose only coverage is through one of the following programs is not eligible for CFC:

(a) Medically needy program under WAC 182-519-0100;

(b) Premium-based children's program under WAC 182-505-0215;

(c) Medicare savings programs under WAC 182-517-0300;

(d) Family planning program under WAC 182-505-0115;

(e) Take charge program under WAC 182-532-0720;

(f) Medical care services program under WAC 182-508-0005;

(g) Pregnant minor program under WAC 182-505-0117;

(h) Alien emergency medical program under WAC 182-507-0110 through 182-507-0120;

(i) State-funded long-term care (LTC) for noncitizens program under WAC 182-507-0125; or

(j) Kidney disease program under chapter 182-540 WAC.

(3) Transfer of asset penalties under WAC 182-513-1363 do not apply to CFC applicants, unless the ~~((applicant))~~ client is applying for long-term services and supports (LTSS) that are available only through one of the HCB waivers under chapter 182-515 WAC.

(4) Home equity limits under WAC 182-513-1350 do apply.

(5) Post-eligibility treatment of income rules do not apply if the ~~((person))~~ client is eligible under subsection (1)(a) or (b) of this section. ~~((People))~~

(6) Clients eligible under subsection (1)(a) or (b) of this section, who reside in an alternate living facility (ALF) ~~((do))~~:

(a) Keep a personal needs allowance (PNA) under WAC 182-513-1105; and

(b) Pay up to the room and board standard ~~((The room and board amount is based on the effective one person medically needy income level (MNIL) minus the residential personal needs allowance (PNA)))~~ under WAC 182-513-1105 except when CN eligibility is based on the rules under WAC 182-513-1205.

~~((6) A person who receives CFC and aged, blind, disabled (ABD) cash assistance in an AFH keeps a clothing and personal incidentals (CPI) amount of \$38.84 and pays the remainder of the cash grant and other available income towards room and board.))~~

(7) A ~~((person))~~ client who receives CFC services under the health care for workers with disabilities (HWD) program under chapter 182-511 WAC must pay the HWD premium in addition to room and board under WAC 182-513-1105, if residing in ~~((a residential setting))~~ an ALF.

(8) Post-eligibility treatment of income rules do apply if a ~~((person))~~ client is eligible under subsection (1)(c) of this section.

(9) A ~~((person))~~ client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the room and board and participation.

(10) PNA, MNIL, and room and board standards are found at ~~((http://))~~ www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1225 Medicaid personal care (MPC). (1) Medicaid personal care (MPC) is a state-plan benefit available to a ~~((person))~~ client who is determined:

(a) Functionally eligible for MPC services under WAC 388-106-0200 through 388-106-0235; and

(b) Financially eligible for a noninstitutional categorically needy (CN) or alternative benefits plan (ABP) Washington apple health (medicaid) program.

(2) MPC services may be provided to a ~~((person)) client~~ residing at home, in a department-contracted adult family home (AFH), or in a licensed assisted living facility that is contracted with the department to provide adult residential care services.

(3) A ~~((person)) client~~ who resides in an alternate living facility (ALF) listed in subsection (2) of this section:

(a) Keeps a personal needs allowance (PNA) ~~((of \$62.79))~~ under WAC 182-513-1105; and

(b) Pays room and board up to the ~~((statewide))~~ room and board ~~((amount))~~ standard under WAC 182-513-1105, unless CN eligibility is determined using rules under WAC 182-513-1205.

~~(4) ((A person who receives MPC and aged, blind, disabled (ABD) cash assistance in an AFH keeps a clothing and personal incidentals (CPI) amount of \$38.84 and pays the rest of the cash grant and other available income towards room and board.~~

~~(5))~~ A ~~((person)) client~~ who receives MPC services under the health care for workers with disabilities (HWD) program under chapter 182-511 WAC must pay the HWD premium in addition to room and board under WAC 182-513-1105, if residing in ~~((a residential setting))~~ an ALF.

~~((6))~~ ~~(5)~~ A ~~((person)) client~~ may have to pay third-party resources as defined under WAC 182-513-1100 in addition to room and board.

~~((7))~~ ~~(6)~~ Current PNA and room and board standards are found at ~~((http://))~~www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1380 Determining a ~~((person's)) client's~~ financial participation in the cost of care for long-term care in a medical institution. This rule describes how the agency or ~~((its))~~ the agency's designee allocates income and excess resources when determining participation in the cost of care in a medical institution.

(1) The agency or ~~((its))~~ the agency's designee defines which income and resources must be used in this process under WAC 182-513-1315.

(2) The agency or ~~((its))~~ the agency's designee allocates nonexcluded income in the following order, and the combined total of (a), (b), (c), and (d) of this subsection cannot exceed the effective one-person medically needy income level (MNIL):

(a) A personal needs allowance (PNA) ~~((of:~~

~~(i) For the following people who receive a needs-based veteran's pension in excess of \$90 and live in a state veteran's home, \$70:~~

~~(A) A veteran without a spouse or dependent child; or~~

~~(B) A veteran's surviving spouse with no dependent children;~~

~~(ii) For people who live in a state veteran's home and receive a pension of less than \$90, the difference between \$160 and the needs-based veteran's pension amount;~~

~~(iii) For a person living in a state veterans' home who does not receive a needs-based veteran's pension, \$160;~~

~~(iv) For all people in a medical institution receiving aged, blind, disabled, (ABD) or temporary assistance for needy families (TANF) cash assistance, \$41.62; or~~

~~(v) For all other people in a medical institution, \$57.28))~~ under WAC 182-513-1105.

(b) Mandatory federal, state, or local income taxes owed by the ~~((person)) client~~.

(c) Wages for a ~~((person)) client~~ who:

(i) Is related to the supplemental security income (SSI) program under WAC 182-512-0050(1); and

(ii) Receives the wages as part of an agency-approved or department-approved training or rehabilitative program designed to prepare the ~~((person)) client~~ for a less restrictive placement. When determining this deduction, employment expenses are not deducted.

(d) Guardianship fees and administrative costs, including any attorney fees paid by the guardian, as allowed under WAC 182-513-1505 through 182-513-1525.

(3) The agency or ~~((its))~~ the agency's designee allocates nonexcluded income after deducting amounts under subsection (2) of this section in the following order:

(a) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is:

(i) For the current month;

(ii) For the time period covered by the PNA; and

(iii) Not counted as the dependent member's income when determining the dependent allocation amount under WAC 182-513-1385.

(b) A monthly maintenance needs allowance for the community spouse as determined using the calculation under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income up to the PNA.

(c) A dependent allowance for each dependent of the institutionalized ~~((person)) client~~ or the ~~((person's)) client's~~ spouse, as determined using the calculation under WAC 182-513-1385.

(d) Medical expenses incurred by the institutionalized individual and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 182-513-1350.

(e) Maintenance of the home of a single institutionalized ~~((person)) client~~ or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the ~~((person)) client or couple~~ is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income deduction.

(4) A ~~((person)) client~~ may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the participation.

(5) A ~~((person)) client~~ is responsible to pay only up to the state rate for the cost of care. If long-term care insurance pays a portion of the state rate cost of care, a ~~((person)) client~~ pays only the difference up to the state rate cost of care.

(6) When a ~~((person))~~ client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the ~~((person))~~ client has in a month.

(7) Standards under this section for long-term care are found at (~~(http://)~~)www.hca.wa.gov/free-or-low-cost-health-care/program-administration/standards-ltc.

AMENDATORY SECTION (Amending WSR 16-04-087, filed 1/29/16, effective 2/29/16)

WAC 182-514-0263 Non-SSI-related institutional medically needy coverage for pregnant women and people age twenty and younger. (1) Medically needy (MN) coverage under this section is only available for people age twenty and younger or pregnant women. The medicaid agency determines a ~~((person))~~ client who meets SSI-related criteria under WAC 182-512-0050 eligible for institutional MN coverage under WAC 182-513-1395. If a ~~((person))~~ client meets requirements in both this section and WAC 182-513-1395, the ~~((person))~~ client may choose which program to enroll in for coverage.

(2) A ~~((person))~~ client whose income exceeds the categorically needy (CN) standards under WAC 182-514-0250 and 182-514-0260 is:

(a) Eligible for MN coverage with no spenddown if the ~~((person's))~~ client's countable income (CI) is equal to or less than the department-contracted daily rate times the number of days in the institution;

(b) Eligible for MN coverage after a spenddown under WAC 182-519-0110 is met if the ~~((person's))~~ client's CI is above the department-contracted daily rate times the number of days in the institution but less than the institution's private rate;

(c) Not eligible for payment of long-term care services provided by the institution if the person's CI exceeds the institution's private rate;

(d) Responsible for paying up to the monthly state rate for the facility as participation in the cost of care; and

(e) Allowed to keep a monthly personal needs allowance (PNA) (~~(of at least \$57.28))~~ under WAC 182-513-1105. Current PNA and long-term care standards can be found at (~~(http://)~~)www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx.

(3) If a ~~((person's))~~ client's CI exceeds the institution's private rate, the agency determines eligibility for medical coverage under chapter 182-519 WAC.

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-515-1507 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Financial eligibility if a ~~((person))~~ client is eligible for an SSI-related noninstitutional categorically needy (CN) medicaid program. (1) A ~~((person))~~ client is financially eligible for home and community based (HCB) waiver services if the client:

(a) ~~((The person))~~ Is receiving coverage under one of the following ~~((supplemental security income (SSI)-related))~~ categorically needy (CN) medicaid programs:

(i) SSI program under WAC 182-510-0001. This includes SSI clients under Section 1619(b) of the Social Security Act;

(ii) SSI-related noninstitutional CN program under chapter 182-512 WAC; or

(iii) Health care for workers with disabilities program (HWD) under chapter 182-511 WAC.

(b) ~~((The person))~~ Does not have a penalty period of ineligibility for the transfer of an asset under WAC 182-513-1363; and

(c) ~~((The person))~~ Does not own a home with equity in excess of the requirements under WAC 182-513-1350.

(2) A ~~((person))~~ client eligible under this section does not pay toward the cost of care, but must pay room and board if living in an alternate living facility (ALF) under WAC 182-513-1100.

(3) A ~~((person))~~ client eligible under this section who lives in a department-contracted ALF described under WAC 182-513-1100 (~~and does not receive a cash grant from the department of social and health services under WAC 388-400-0060~~):

(a) Keeps a personal needs allowance (PNA) (~~(of \$62.79))~~ under WAC 182-513-1105; and

(b) Pays towards room and board (~~(up to the room and board standard with the remaining income. The room and board standard is the federal benefit rate (FBR) minus \$62.79))~~ under WAC 182-513-1105.

(4) A ~~((person))~~ client who is eligible under the HWD program must pay the HWD premium under WAC 182-511-1250, in addition to room and board, if residing in an ALF.

(5) ~~((A person who is eligible for the aged, blind, disabled (ABD) cash assistance program under WAC 388-400-0060 does not pay toward the cost of care and keeps:~~

(a) ~~The cash grant amount authorized under WAC 388-478-0033 if living at home;~~

(b) ~~A PNA of \$38.84, but must pay towards room and board with the remaining income and ABD cash grant up to the room and board standard if living in an adult family home (AFH). The room and board standard is the federal benefit rate (FBR) minus \$62.79; or~~

(c) ~~The cash grant of \$38.84 under WAC 388-478-0006 if living in an assisted living facility.~~

~~((6))~~ Current resource, income, PNA, and room and board standards are found at (~~(http://)~~)www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-515-1509 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility. (1) A ~~((person))~~ client eligible for home and community based (HCB) waiver services authorized by home and community services (HCS) under WAC 182-515-1508 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a ~~((person's))~~ client's responsibility towards cost of care.

(b) Room and board is a term that refers to a ((person's)) client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a ((person)) client must pay toward the cost of care for HCB waiver services authorized by HCS when living at home:

(a) A single ((person)) client who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the federal poverty level (FPL) and must pay the remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

(b) A married ((person)) client who lives with the ((person's)) client's spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of the ((person's)) client's available income toward cost of care after allowable deductions under subsection (4) of this section.

(c) A married ((person)) client who lives at home and apart from the ((person's)) client's spouse keeps a PNA of up to the FPL but must pay the remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each ((person)) client receives HCB waiver services is each allowed to keep a PNA of up to the FPL but must pay remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(e) A married couple living at home where each ((person)) client receives HCB waiver services, one ((person)) spouse authorized by the developmental disabilities administration (DDA) and the other authorized by HCS, is allowed the following:

(i) The ((person)) client authorized by DDA pays toward the cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The ((person)) client authorized by HCS retains the federal poverty level (FPL) and pays the remainder of the available income toward cost of care after allowable deductions under subsection (4) of this section.

(3) The agency determines how much a ((person)) client must pay toward the cost of care for HCB waiver services authorized by HCS and room and board when living in a department contracted alternate living facility (ALF) defined under WAC 182-513-1100 ((a person)). A Client:

(a) Keeps a PNA of ((\$62.79)) under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard ~~(The room and board standard is the federal benefit rate (FBR) minus \$62.79))~~ under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by deductions in the following order:

(a) An earned income deduction of the first \$65 plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under WAC 182-513-1505 through 182-513-1525;

(c) Current or back child support garnished or withheld from the ((person's)) client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse as determined under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the ((person's)) community spouse's income to the ((person's)) community spouse's PNA, as calculated under WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized ((person)) client, or the ((person's)) client's spouse, as calculated under WAC 182-513-1385;

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the special income level (SIL) defined under WAC 182-513-1100:

(a) The PNA allowed in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A ((person)) client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A ((person)) client must pay the ((person's)) client's provider the sum of the room and board amount, and the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A ((person)) client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a ((person)) client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the ((person)) client has received in a month.

(10) Standards described in this section are found at ((http://))www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-515-1512 Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility if a ((person)) client is eligible for a noninstitutional SSI-related categorically needy (CN) program. (1) A ((person)) client is financially eligible for home and community

based (HCB) waiver services authorized by the developmental disabilities administration (DDA) if:

(a) The ~~((person))~~ client is receiving coverage under one of the following ~~((SSI-related))~~ categorically needy (CN) medicaid programs:

(i) Supplemental security income (SSI) program under WAC 182-510-0001. This includes SSI clients under 1619(b) status; or

(ii) Health care for workers with disabilities (HWD) under chapter 182-511 WAC; or

(iii) SSI-related noninstitutional (CN) program under chapter 182-512 WAC; or

(iv) The foster care program under WAC 182-505-0211 and the ~~((person))~~ client meets disability requirements under WAC 182-512-0050.

(b) The ~~((person))~~ client does not have a penalty period of ineligibility for the transfer of an asset as under WAC 182-513-1363; and

(c) The ~~((person))~~ client does not own a home with equity in excess of the requirements under WAC 182-513-1350.

(2) A ~~((person))~~ client eligible under this section does not pay toward the cost of care, but must pay room and board if living in an alternate living facility (ALF) under WAC 182-513-1100.

(3) A ~~((person))~~ client eligible under this section who lives in a department-contracted ALF described under WAC 182-513-1100:

(a) Keeps a personal needs allowance (PNA) ~~((of \$62.79))~~ under WAC 182-513-1105; and

(b) Pays towards room and board up to the room and board standard ~~((with remaining income. The room and board standard is the federal benefit rate (FBR) minus \$62.79))~~ under WAC 182-513-1105.

(4) A ~~((person))~~ client who is eligible under the HWD program must pay the HWD premium under WAC 182-511-1250, in addition to room and board if residing in an ALF.

(5) ~~((A person who is eligible for the aged, blind, disabled (ABD) cash assistance program under WAC 388-400-0060 does not pay participation toward the cost of care and keeps the following:~~

~~((a) The cash grant amount authorized under WAC 388-478-0033 if living at home;~~

~~((b) A PNA of \$38.84, but must pay towards room and board with the remaining income and ABD cash grant for the cost of room and board up to the room and board standard if living in an adult family home (AFH). The room and board standard is the federal benefit rate (FBR) minus \$62.79; or~~

~~((c) The cash grant of \$38.84 authorized under WAC 388-478-0006 when living in an assisted living or DDA group home.~~

~~((6))~~ Current resource, income, PNA and room and board standards are found at ~~((http://))~~ www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-515-1514 Home and community based (HCB) services authorized by the developmental disabilities administration (DDA)—Client financial responsibility. (1) A ~~((person))~~ client eligible for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) under WAC 182-515-1513 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a ~~((person's))~~ client's responsibility towards cost of care.

(b) Room and board is a term that refers to a ~~((person's))~~ client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a ~~((person))~~ client must pay toward the cost of care for home and community based (HCB) waiver services authorized by the DDA when the ~~((person))~~ client is living at home, as follows:

(a) A single ~~((person))~~ client who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the special income level (SIL) defined under WAC 182-513-1100.

(b) A single ~~((person))~~ client who lives at home on the roads to community living program authorized by DDA keeps a PNA up to the SIL but must pay any remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

(c) A married ~~((person))~~ client who lives with the ~~((person's))~~ client's spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the SIL but must pay any remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each ~~((person))~~ client receives HCB waiver services, one authorized by DDA and the other authorized by home and community services (HCS) is allowed the following:

(i) The ~~((person))~~ client authorized by DDA keeps a PNA of up to the SIL but must pay any remaining available income toward the ~~((person's))~~ client's cost of care after allowable deductions in subsection (4) of this section; and

(ii) The ~~((person))~~ client authorized by HCS pays toward the cost of care under WAC 182-515-1507 or 182-515-1509.

(3) The agency determines how much a ~~((person))~~ client must pay toward the cost of care for HCB wavier services authorized by DDA and room and board when the ~~((person))~~ client is living in a department-contracted ALF defined under WAC 182-513-1100. A ~~((person))~~ client:

(a) Keeps a PNA ~~((of \$62.79))~~ under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard ~~((The room and board standard is the federal benefit rate (FBR) minus \$62.79))~~ under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of

care after it is reduced by allowable deductions in the following order:

(a) An earned income deduction of the first \$65, plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under WAC 182-513-1505 through 182-513-1525;

(c) Current or back child support garnished or withheld from the ~~((person's))~~ client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse under WAC 182-513-1385. If the community spouse is on long-term care services, the allocation is limited to an amount that brings the ~~((person's))~~ community spouse's income to the ~~((person's))~~ community spouse's PNA;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized ~~((person))~~ client, or the ~~((person's))~~ client's spouse, as calculated under WAC 182-513-1385; and

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the SIL defined under WAC 182-513-1100:

(a) The PNA described in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A ~~((person))~~ client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A ~~((person))~~ client must pay the ~~((person's))~~ client's provider the sum of the room and board amount, the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A ~~((person))~~ client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a ~~((person))~~ client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the ~~((person))~~ client has received in a month.

(10) Standards described in this section are found at ~~((http://))~~ www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.

WSR 17-23-040

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed November 8, 2017, 10:29 a.m., effective December 9, 2017]

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

Purpose: The agency is revising this rule to correct a typo in the definition of "Community spouse." The WAC citation referenced in the definition should read WAC 182-500-0100.

Citation of Rules Affected by this Order: Amending WAC 182-500-0020.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 17-18-057 on September 1, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 8, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-18-019, filed 8/26/16, effective 9/26/16)

WAC 182-500-0020 Definitions—C. "Caretaker relative" means a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care, and who is one of the following:

(1) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(2) The spouse of such parent or relative (including same sex marriage or domestic partner), even after the marriage is terminated by death or divorce.

(3) Other relatives including relatives of half-blood, first cousins once removed, people of earlier generations (as shown by the prefixes of great, great-great, or great-great-great), and natural parents whose parental rights were terminated by a court order.

"**Carrier**" means an organization that contracts with the federal government to process claims under medicare Part B.

"**Categorically needy (CN) or categorically needy program (CNP)**" is the state and federally funded health care program established under Title XIX of the Social Security Act for people within medicaid-eligible categories, whose income and/or resources are at or below set standards.

"**Categorically needy income level (CNIL)**" is the standard used by the agency to determine eligibility under a categorically needy program.

"Categorically needy (CN) scope of care" is the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to people eligible to receive benefits under a CN program. Some state-funded health care programs provide CN scope of care.

"Center of excellence" - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

"Centers for Medicare and Medicaid Services (CMS)" - The federal agency that runs the medicare, medicaid, and children's health insurance programs, and the federally facilitated marketplace.

"Children's health program or children's health care programs" See "Apple health for kids."

"Client" means a person who is an applicant for, or recipient of, any Washington apple health program, including managed care and long-term care. See definitions for "applicant" and "recipient" in RCW 74.09.741.

"Community spouse." See "spouse" in WAC ((~~182-500-100~~)) 182-500-0100.

"Cost-sharing" means any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for nonnetwork providers, and spending for noncovered services.

"Cost-sharing reductions" means reductions in cost-sharing for an eligible person enrolled in a silver level plan in the health benefit exchange or for a person who is an American Indian or Alaska native enrolled in a qualified health plan (QHP) in the exchange.

"Couple." See "spouse" in WAC 182-500-0100.

"Covered service" is a health care service contained within a "service category" that is included in a Washington apple health (WAH) benefits package described in WAC 182-501-0060. For conditions of payment, see WAC 182-501-0050(5). A noncovered service is a specific health care service (for example, cosmetic surgery), contained within a service category that is included in a WAH benefits package, for which the agency or the agency's designee requires an approved exception to rule (ETR) (see WAC 182-501-0160). A noncovered service is not an excluded service (see WAC 182-501-0060).

"Creditable coverage" means most types of public and private health coverage, except Indian health services, that provide access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under premium-based programs included in Washington apple health (WAH). Creditable coverage is described in 42 U.S.C. 300gg-3 (c)(1).

WSR 17-23-046
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 8, 2017, 1:42 p.m., effective December 9, 2017]

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

Purpose: ESHB 1814 (chapter 269, Laws of 2017), which took effect on July 23, 2017, amended RCW 74.20A.320 to change the requirements for service of the notice of noncompliance and intent to suspend licenses, which is the first step in the process to suspend one or more licenses of a noncustodial parent who is not in compliance with a court order. In order to implement ESHB 1814, the department must amend WAC 388-14A-4505 and must correct a cross-reference in WAC 388-14A-4510. The division of child support adopted emergency rules under WSR 17-16-026, effective July 23, 2017.

Citation of Rules Affected by this Order: Amending WAC 388-14A-4505 and 388-14A-4510.

Statutory Authority for Adoption: Implementation of ESHB 1814 (chapter 269, Laws of 2017), which took effect on July 23, 2017, is authorized under RCW 26.23.030, 34.05.220 (1)(a), 34.05.322, 34.05.350 (1)(a) and (b), 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310, and 74.20A.328.

Adopted under notice filed as WSR 17-20-034 on September 28, 2017.

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 the Request of a Non-governmental 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 2, Repealed 0.

Date Adopted: November 8, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-03-029, filed 1/12/10, effective 2/12/10)

WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses. (1) Before certifying a noncustodial parent (NCP) for noncompliance, the division of child support (DCS) must serve the NCP with a notice of noncompliance and intent to suspend licenses. This notice tells the NCP that DCS intends to submit the NCP's name to the department of licensing and any other appropriate licens-

ing entity as a licensee who is not in compliance with a child support order.

(2) The language of the underlying child support order determines the method by which DCS must serve the notice of noncompliance and intent to suspend licenses.

(3) If the support order establishing or modifying the child support obligation includes a statement required under RCW 26.23.050 that the NCP's privileges to obtain and maintain a license may not be renewed or may be suspended if the NCP is not in compliance with a support order, DCS may serve the notice by regular mail to the NCP's last known mailing address on file with the department.

(a) Notice by regular mail is deemed served three days from the date the notice was deposited with the United States Postal Service.

(b) DCS may choose to serve the notice by personal service.

(4) If the support order does not include a statement that the NCP's privileges to obtain and maintain a license may not be renewed or may be suspended if the NCP is not in compliance with a support order:

(a) DCS must serve the notice by certified mail, return receipt requested.

(b) If DCS is unable to serve the notice by certified mail, DCS must serve the notice by personal service, as provided in RCW 4.28.080.

~~((3) The notice must include a copy of the NCP's child support order and must contain the address and phone number of the DCS office which issued the notice.~~

(4)) (5) The notice must contain the information required by RCW 74.20A.320(2), including:

(a) The address and telephone number of DCS office that issued the notice;

(b) That in order to prevent DCS from certifying the NCP's name to the department of licensing or other licensing entity, the NCP has twenty days from receipt of the notice, or sixty days after receipt if the notice was served outside the state of Washington, to contact the department and:

(i) Pay the overdue support amount in full;

(ii) Request a hearing as provided in WAC 388-14A-4527;

(iii) Agree to a payment schedule as provided in WAC 388-14A-4520; or

(iv) File an action to modify the child support order with the appropriate court or administrative forum, in which case DCS will stay the certification process up to six months.

(c) That failure to contact DCS within twenty days of receipt of the notice (or sixty days if the notice was served outside of the state of Washington) will result in certification of the NCP's name to the department of licensing and any other appropriate licensing entity for noncompliance with a child support order. Upon receipt of the notice:

(i) The licensing entity will suspend or not renew the NCP's license and the department of licensing (DOL) will suspend or not renew any driver's license that the NCP holds until the NCP provides DOL or the other licensing entity with a release from DCS stating that the NCP is in compliance with the child support order;

(ii) The department of fish and wildlife will suspend a fishing license, hunting license, occupational licenses (such

as a commercial fishing license), or any other license issued under chapter 77.32 RCW that the NCP may possess. In addition, suspension of a license by the department of fish and wildlife may also affect the NCP's ability to obtain permits, such as special hunting permits, issued by the department. Notice from DOL that an NCP's driver's license has been suspended shall serve a notice of the suspension of a license issued under chapter 77.32 RCW.

(d) That suspension of a license will affect insurability if the NCP's insurance policy excludes coverage for acts occurring after the suspension of a license; and

(e) If the NCP subsequently comes into compliance with the child support order, DCS will promptly provide the NCP and the appropriate licensing entities with a release stating the NCP is in compliance with the order.

(6) DCS is not required to include a copy of the NCP's child support order with the notice. Upon request from the NCP, DCS must provide a copy of the order or orders that serve as a basis for the notice of noncompliance.

AMENDATORY SECTION (Amending WSR 10-03-029, filed 1/12/10, effective 2/12/10)

WAC 388-14A-4510 Who is subject to the DCS license suspension program? (1) The division of child support (DCS) may serve a notice of noncompliance on a non-custodial parent (NCP) who is not in compliance with a child support order.

(a) DCS may serve a notice of noncompliance on an NCP who meets the criteria of this section, even if the NCP is in jail or prison. Unless the NCP has other resources available while in jail or prison, DCS stays the commencement of the objection period set out in WAC ((388-14A-4505 (4)(b))) 388-14A-4505 (5)(b) until the NCP has been out of jail or prison for thirty days.

(b) DCS may serve a notice of noncompliance on an NCP who meets the criteria of this section, even if the NCP is a public assistance recipient. DCS stays the commencement of the objection period in WAC ((388-14A-4505 (4)(b))) 388-14A-4505 (5)(b) until the thirty days after the NCP's cash assistance grant is terminated.

(2) Compliance with a child support order for the purposes of the license suspension program means the NCP owes no more than six months' worth of child support.

(3) Noncompliance with a child support order for the purposes of the license suspension program means an NCP has:

(a) An obligation to pay child support under a court or administrative order; and

(b) Accumulated a support debt, also called an arrears or arrearage, totaling more than six months' worth of child support payments; or

(c) Failed to do one of the following:

(i) Make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments; or

(ii) Make payments to the Washington state support registry under a written agreement with DCS toward current support and arrearages and the arrearages still amount to more than six months' worth of child support payments.

(4) There is no minimum dollar amount required for license suspension, as long as the arrears owed by the NCP amount to more than six months' worth of support payments:

Example 1. Assume the child support order sets current support at one hundred dollars per month: The NCP has not made a single payment since the order was entered seven months ago. This NCP is more than six months in arrears.

Example 2. Assume the child support order sets current support at one hundred dollars per month: The NCP has paid for the last few months, but owes arrears of over six hundred dollars. This NCP is more than six months in arrears.

Example 3. Assume the child support order sets current support at one hundred dollars per month: The child is over eighteen, and no more current support is owed. However, the NCP has a debt of over one thousand two hundred dollars. This NCP is more than six months in arrears.

Example 4. Assume a judgment of three thousand dollars is entered by the court: The order requires the NCP to pay fifty dollars per month toward the arrears. The NCP has not made payments toward this obligation for eight months. This NCP is more than six months in arrears.

WSR 17-23-050
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 9, 2017, 10:49 a.m., effective December 10, 2017]

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

Purpose: The department is amending WAC 388-493-0010 Working family support, in order to extend the program end date from June 30, 2017, to June 30, 2019, and to include a ten thousand household program enrollment limit to the working family support program effective July 31, 2017.

The department must make these amendments to comply with proviso language in the 2017-2019 operating budget (SSB 5883).

Citation of Rules Affected by this Order: Amending WAC 388-493-0010.

Statutory Authority for Adoption: RCW 74.04.050, 74.040.055 [74.04.055], 74.04.057, 74.08.090.

Other Authority: SSB 5883.

Adopted under notice filed as WSR 17-20-033 on September 28, 2017.

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 the Request of a Non-governmental 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: November 9, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-07-012, filed 3/6/17, effective 4/6/17)

WAC 388-493-0010 Working family support. (1) What is the working family support (WFS) program?

The working family support program is administered by the department of social and health services (~~((Department))~~) (department) and provides an additional monthly food benefit from May 2016 through June 30, (~~(2017)~~) 2019 to low income families who meet specific criteria. Continuance of the program beyond June 30, (~~(2017)~~) 2019 is contingent on specific legislative funding for the working family support program.

(2) The following definitions apply to this program:

(a) "Co-parent" means another adult in your home (~~(that)~~) who is related to your qualifying child through birth or adoption.

(b) "Qualifying child" means a child under the age of eighteen who is:

(i) Your child through birth or adoption; or

(ii) Your step-child.

(c) "Work" means subsidized or unsubsidized employment or self-employment. To determine self-employment hours, we divide your net self-employment income by the federal minimum wage.

(3) Who is eligible for the working family support program?

You (~~(are)~~) may be eligible for working family support food assistance if you meet all of the following:

(a) You receive food assistance through basic food, food assistance program for legal immigrants (FAP), or transitional food assistance (TFA);

(b) Receipt of working family support food assistance would not cause your countable food assistance income to exceed the two hundred percent federal poverty level (FPL);

(c) No one in your food assistance unit receives temporary assistance for needy families (TANF) or state family assistance (SFA);

(d) A qualifying child lives in your home;

(e) You, your spouse, or co-parent(~~(s)~~) work a minimum of thirty-five hours a week, and if you live with your spouse or co-parent, you must be in the same assistance unit;

(f) You provide proof of the number of hours worked; and

(g) You reside in Washington state (~~(per)~~) as required under WAC 388-468-0005.

(4) How (~~(can)~~) may I apply for working family support?

(a) The department will review your eligibility for the working family support program:

(i) When you apply for food assistance, or

(ii) At the time of your food assistance eligibility review.

(b) You may request the working family support benefit in person, in writing, or by phone at any time.

(5) How long ~~((can))~~ may I receive working family support?

(a) You may recertify up to an additional six months for working family support if you meet the criteria listed ~~((above))~~ in subsection (3) of this section and provide current proof that you, your spouse, or co-parent works a minimum of thirty-five hours a week.

(b) Working family support certification ends when:

(i) You complete either a certification or mid-certification review for food assistance under WAC 388-434-0010 or ~~((WAC))~~ 388-418-0011, and you do not provide proof of the number of hours that you, your spouse, or your co-parent work;

(ii) You no longer receive basic food, FAP, or TFA;

(iii) You receive TANF or SFA;

(iv) You do not have a qualifying child in your home;

(v) You, your spouse, or co-parent~~((s))~~ no longer work a minimum of thirty-five hours a week; or

(vi) You are no longer a resident of Washington state.

(6) What benefits will I receive if I am eligible for the working family support program?

(a) The assistance unit will receive a separate ten dollars monthly food assistance benefit each month.

(b) Working family support benefits are not prorated.

(7) Enrollment in the working family support program is limited to ten thousand households per month.

WSR 17-23-054

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 9, 2017, 4:19 p.m., effective December 10, 2017]

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

Purpose: The purpose is to:

(1) Address changes to federal law - Elementary and Secondary Act (ESEA) of 1965, which was amended in December 2015 by the Every Student Succeeds Act (ESSA).

- Adding WAC 392-172A-01062.
- Amending WAC 392-172A-01120, 392-172A-02090, 392-172A-04040, 392-172A-04085, 392-172A-06030, 392-172A-06055, and 392-172A-07035.
- Repealing WAC 392-172A-01045, 392-172A-01085, and 392-172A-01110.

(2) Align with federal law - Individuals with Disabilities Education Act (IDEA).

- Amending WAC 392-172A-03105.

(3) Address changes to Washington state law.

- Amending WAC 392-172A-02090, to address RCW 28A.410.271 regarding educational interpreters and ESHB 1115 (effective July 23, 2017) regarding paraeducators.
- Amending WAC 392-172A-05170, to address WAC 392-400-245, 392-400-260, and 392-400-275.

(4) Clarify existing requirements under the rules for the provision of special education.

- Amending WAC 392-172A-02095, 392-172A-02100, and 392-172A-03015.
- Reorganizing special education discipline rules.
 - Splitting WAC 392-172A-05145 into six WAC sections.
 - Amending WAC 392-172A-05145 Authority of school personnel.
 - Adding WAC 392-172A-05146 Manifestation determination.
 - Adding WAC 392-172A-05147 Conduct is a manifestation of a student's disability.
 - Adding WAC 392-172A-05148 Conduct is not a manifestation of a student's disability.
 - Adding WAC 392-172A-05149 Special circumstances.
 - Amending WAC 392-172A-05150, no longer addresses determination of setting (incorporated into other new discipline WAC), but now addresses notification of change of placement.
 - Amending WAC 392-172A-05140, 392-172A-05160, 392-172A-05165, and 392-172A-05170 to reflect the reorganization of the other discipline WAC.
- Splitting WAC 392-172A-05000 into two WAC sections.
 - Amending WAC 392-172A-05000, to only address opportunity to examine records.
 - Adding WAC 392-172A-05001, to only address parent participation in meetings.

(5) Correct typographical errors and other outdated information.

- Amending WAC 392-172A-01035, 392-172A-03015, 392-172A-05025, and 392-172A-05185.

Citation of Rules Affected by this Order: New WAC 392-172A-01062, 392-172A-05146, 392-172A-05147, 392-172A-05148, 392-172A-05149 and 392-172A-05001; repealing WAC 392-172A-01045, 392-172A-01085 and 392-172A-01110; and amending WAC 392-172A-01035, 392-172A-01120, 392-172A-02090, 392-172A-02095, 392-172A-02100, 392-172A-03015, 392-172A-03105, 392-172A-04040, 392-172A-04085, 392-172A-05000, 392-172A-05001, 392-172A-05025, 392-172A-05140, 392-172A-05145, 392-172A-05150, 392-172A-05160, 392-172A-05165, 392-172A-05170, 392-172A-05185, 392-172A-06030, 392-172A-06055, and 392-172A-07035.

Statutory Authority for Adoption: RCW 28A.155.090.

Adopted under notice filed as WSR 17-17-166 on August 23, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 392-172A-02100 has been changed to address the suggestion of a commenter. The regulation now states "Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education in a homebound placement pursuant to a student's individualized education program. Home/hospital

instruction shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness."

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 7, Repealed 3; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 5, Amended 14, 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: November 9, 2017.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-01035 Child with a disability or student eligible for special education. (1)(a) Child with a disability or as used in this chapter, a student eligible for special education means a student who has been evaluated and determined to need special education because of having a disability in one of the following eligibility categories: Intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional/behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or for students, three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

(b) For purposes of providing a student with procedural safeguard protections identified in WAC 392-172A-05015, the term, "student eligible for special education" also includes a student whose identification, evaluation or placement is at issue.

(c) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in ~~((subsec-tion (1)))~~ ~~((section))~~ subsection, but only needs a related service and not special education, the student is not a student eligible for special education under this chapter. School districts and other public agencies must be aware that they have obligations under other federal and state civil rights laws and rules, including 29 U.S.C. 764, RCW 49.60.030, and 43 U.S.C. 12101 that apply to students who have a disability regardless of the student's eligibility for special education and related services.

(d) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(2) The terms used in subsection (1)(a) of this section are defined as follows:

(a)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional/behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness and adversely affect a student's educational performance.

(c) Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d)(i) Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(A) Two standard deviations below the mean in one or more of the five developmental areas; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas.

(ii) The five developmental areas for students with a developmental delay are:

(A) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(B) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(C) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or

motor skills used for body control such as standing, walking, balance, and climbing;

(D) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(E) Adaptive development: The ability to develop and exhibit age-appropriate self-help skills, including independent feeding, toileting, personal hygiene and dressing skills.

(iii) A school district is not required to adopt and use the category "developmentally delayed" for students, three through eight.

(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through eight, established under this section.

(v) School districts using the category "developmentally delayed," for students three through eight may also use any other eligibility category.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age nine and determined eligible for services under one of the other eligibility categories.

(vii) The term "developmentally delayed, birth to three years" are those infants and toddlers under three years of age who:

(A) Meet the eligibility criteria established by the state lead agency under Part C of IDEA; and

(B) Are in need of early intervention services under Part C of IDEA. Infants and toddlers who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and related services.

(e)(i) Emotional/behavioral disability means a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

(f) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(g) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(h) Multiple disabilities means concomitant impairments, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term, multiple disabilities does not include deaf-blindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(j) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a student's educational performance.

(k)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance.

(ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(l) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

(m) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(n) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

NEW SECTION

WAC 392-172A-01062 English learner. English learner has the meaning given the term in 20 U.S.C. Section 7801(20). The term "English learner," when used with respect to an individual, means an individual:

- (1) Who is aged three through twenty-one;
- (2) Who is enrolled or preparing to enroll in an elementary school or secondary school;
- (3)(a) Who was not born in the United States or whose native language is a language other than English;
- (b)(i) Who is a Native American or Alaska native, or a native resident of the outlying areas; and
- (ii) Who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or
- (c) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and
- (4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:
 - (a) The ability to meet the challenging state academic standards;
 - (b) The ability to successfully achieve in classrooms where the language of instruction is English; or
 - (c) The opportunity to participate fully in society.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01120 Native language. (1) Native language, when used with respect to an individual who is ~~((limited))~~ an English ~~((proficient))~~ learner, means the following:

- (a) The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except as provided in (b) of this subsection.
- (b) In all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.
- (2) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, Braille, or oral communication.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

WAC 392-172A-02090 Personnel qualifications. (1) ~~((In addition to the highly qualified requirements for teachers, pursuant to WAC 392-172A-01085,))~~ All school district personnel providing special education services and/or related services shall meet the following qualifications:

- (a) All employees shall hold such credentials, licenses, certificates, endorsements or permits as are now or hereafter required by the professional educator standards board for the particular position of employment and shall meet such supplemental standards as may be established by the school district of employment. Supplemental standards established by a

district or other public agency may exceed, but not be less than, those established by the professional educator standards board in accordance with Title 181 WAC and this section.

(b) In addition to the requirement in (a) of this subsection ~~((+))~~, all special education teachers providing, designing, supervising, monitoring or evaluating the provision of special education shall possess "substantial professional training." "Substantial professional training" as used in this section shall be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by the OSPI, professional education and certification section.

(c) A teacher will be considered to meet the applicable requirements in (a) and (b) of this subsection if that teacher is participating in an alternative route to a special education certification program under which the teacher:

(i) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(ii) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(iii) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(iv) Demonstrates satisfactory progress toward full certification according to the state professional standards board rules, and the state ensures, through its certification and endorsement process, that the provisions of subsection (2) of this section are met.

(d) Other certificated related services personnel providing specially designed instruction or related services as defined in this chapter, shall meet standards established under the educational staff associate rules of the professional educator standards board, as now or hereafter amended.

~~((+))~~ (e) Employees with only an early childhood special education endorsement may be assigned to programs that serve students birth through eight. Preference for an early childhood special education assignment must be given first to employees having early childhood special education endorsement, but may be assigned to an individual with a special education endorsement.

~~((+))~~ (f) Certified and/or classified staff assigned to provide instruction in Braille, the use of Braille, or the production of Braille must demonstrate competency with grade two standard literary Braille code by successful completion of a test approved by the professional educator standards board pursuant to WAC 181-82-130.

~~((+))~~ (g) Certified and/or classified staff assigned as educational interpreters, must meet the performance standards outlined in RCW 28A.410.271 by passing an educational interpreter assessment approved by the professional educator standards board.

(h) Paraprofessional staff and aides shall present evidence of skills and knowledge established under the rules of the professional educator standards board, necessary to meet the needs of students eligible for special education, and shall be under the supervision of a certificated teacher with a special education endorsement, or a certificated educational staff associate or a licensed staff, as provided in ~~((+))~~ (i) of this

subsection. Paraprofessional staff ~~((~~h~~)) assigned to~~ Title 1 school-wide programs shall also meet ESEA standards for paraprofessionals ~~((~~-~~ Districts shall have procedures that ensure that classified staff receive training to meet state recommended core competencies pursuant to RCW 28A.415.310)).~~

~~((~~g~~))~~ (i) Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

(2) School districts must take measurable steps to recruit, hire, train, and retain ~~((highly qualified))~~ personnel, who meet the applicable requirements described in subsection (1)(a) of this section, to provide special education and related services to students eligible for special education. There may be occasions when, despite efforts to hire or retain ~~((highly qualified))~~ teachers who meet the applicable requirements, they are unable to do so. The following options are available in these situations:

(a) Teachers who meet state board criteria pursuant to WAC 181-82-110(3) as now or hereafter amended, are eligible for a preendorsement waiver. Application for the special education preendorsement waiver shall be made to the special education section at the OSPI.

(b) In order to temporarily assign a classroom teacher without a special education endorsement to a special education position, the district or other public agency must keep written documentation on the following:

(i) The school district must make one or more of the following factual determinations:

(A) The district or other public agency was unable to recruit a teacher with the proper endorsement who was qualified for the position;

(B) The need for a teacher with such an endorsement could not have been reasonably anticipated and the recruitment of such a classroom teacher at the time of assignment was not reasonably practicable; and/or

(C) The reassignment of another teacher within the district or other public agency with the appropriate endorsement to such assignment would be unreasonably disruptive to the current assignments of other classroom teachers or would have an adverse effect on the educational program of the students assigned such other classroom teachers.

(ii) Upon determination by a school district that one or more of these criteria can be documented, and the district determines that a teacher has the competencies to be an effective special education teacher but does not have endorsement in special education, the district can so assign the teacher to special education. The school district is responsible for determining that the assigned teacher ~~((so assigned))~~ must have completed nine quarter hours (six semester hours) ~~((or nine quarter hours))~~ of course work ~~((which are))~~ applicable to an endorsement in special education. ~~((The following requirements apply:))~~

(iii) Pursuant to WAC 181-82-110, if teachers are so assigned, the following requirements apply:

(A) A designated representative of the district and any such teacher shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(B) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments; and

(C) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned ~~((and~~

~~((D) The assignment of such teachers for the previous school year shall be reported annually to the professional educator standards board by the employing school district as required by WAC 180-16-195)).~~

(3) Teachers placed under the options described in subsection (2) of this section do not meet the definition of ~~((highly qualified))~~ substantial professional training.

(4) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular school district employee ~~((be highly qualified))~~ to meet the applicable requirements described in subsection (1)(a) of this section, or to prevent a parent from filing a state complaint about staff qualifications with the OSPI under WAC 392-172A-05025 through 392-172A-05040.

(5) School districts and other public agencies that are recipients of funding under Part B of the act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the act.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02095 Transportation. (1) Methods. Transportation options for students eligible for special education shall include the following categories and shall be exercised in the following sequence:

(a) A scheduled school bus;

(b) Contracted transportation, including public transportation; and

(c) Other transportation arrangements, including that provided by parents. Board and room cost in lieu of transportation may be provided whenever the above stated transportation options are not feasible because of the need(s) of the student or because of the unavailability of adequate means of transportation, in accordance with rules of the superintendent of public instruction.

(2) Welfare of the student. The transportation of the student shall be in accordance with ~~((rules of the OSPI governing transportation by public school districts))~~ chapters 392-143, 392-144, and 392-145 WAC.

(3) Bus aides and drivers. Training and supervision of bus aides and drivers shall be the responsibility of the school district.

(4) Special equipment. Special equipment may include lifts, wheelchair holders, restraints, and two-way radios. All such special equipment shall comply with specifications contained in the specifications for school buses as now or hereafter established by the OSPI.

(5) Transportation time on bus. Wherever reasonably possible, no student should be required to ride more than sixty minutes one way.

(6) Transportation for state residential school students to and from the residential school and the sites of the educational program shall be the responsibility of the department of social and health services and each state residential school pursuant to law.

(7) Transportation for a state residential school student, including students attending the state school for the deaf and the state school for the blind, to and from such school and the residency of such student shall be the responsibility of the district of residency only if the student's placement was made by such district or other public agency pursuant to an inter-agency agreement—i.e., an appropriate placement in the least restrictive environment.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-02100 Home/hospital instruction.

Home or hospital instruction shall be provided to students eligible for special education and other students who are unable to attend school for an estimated period of four weeks or more because of disability or illness. As a condition to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not determined eligible for special education, but who qualifies pursuant to this subsection shall be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a student eligible for special education for the purposes of generating state or federal special education funds. A school district shall not pay for the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section.

Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education ~~(-H)~~ in a homebound placement pursuant to a student's individualized education program. Home/hospital instruction shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness.

A student eligible for special education who qualifies for home/hospital instruction must continue to receive educational services that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward

meeting the goals set out in the student's IEP. The IEP team determines the appropriate services.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03015 Reevaluation timelines. (1) A school district must ensure that a reevaluation of each student eligible for special education is conducted in accordance with WAC 392-172A-03020 through 392-172A-03080 when:

(a) The school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or

(b) If the child's parent or teacher requests a reevaluation.

(2) A reevaluation conducted under subsection (1) of this section:

(a) May occur not more than once a year, unless the parent and the school district agree otherwise; and

(b) Must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.

(3) Reevaluations shall be completed within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent;

(b) Thirty-five school days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, ~~((within the time frames in subsection (2) of this section))~~ including specifying the reasons for extending the timeline.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-03105 When IEPs must be in effect.

(1) At the beginning of each school year, each school district must have an IEP in effect for each student eligible for special education that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) The school district holds a meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

(4) If a student eligible for special education transfers from one school district to another school district within ~~((the))~~ Washington state and ~~((has))~~ had an IEP that was in effect ~~((for the current school year from))~~ in the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops~~((adopts,))~~ and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education transfers from a school district located in another state to a school district within ~~((the))~~ Washington state and ~~((has))~~ had an IEP that ~~((is))~~ was in effect ~~((for the current school year from))~~ in the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in ~~((this))~~ Washington state, if the school district determines an evaluation is necessary to establish eligibility requirements under Washington state standards; and

(b) Develops~~((adopts,))~~ and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the school district in which the student was previously enrolled, pursuant to RCW 28A.225.330 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW 28A.225.330 and applicable FERPA requirements.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-04040 Equitable services provided.

(1) The services provided to parentally placed private school students eligible for special education must be provided by personnel meeting the same standards as personnel providing services in the public schools~~((except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school students eligible for special education do not have to meet the highly qualified special education teacher requirements))~~.

(2) Parentally placed private school students eligible for special education may receive a different amount of services than students eligible for special education attending public schools.

(3) Each parentally placed private school student eligible for special education who has been designated to receive services must have a services plan that describes the specific special education and related services that the school district will provide in light of the services that the school district has determined, it will make available to parentally placed private school students eligible for special education.

(4) The services plan must, to the extent appropriate:

(a) Meet the requirements of WAC 392-172A-03090, with respect to the services provided; and

(b) Be developed, reviewed, and revised consistent with WAC 392-172A-03090 through 392-172A-03110.

(5) The provision of services must be provided:

(a) By employees of a school district or ESD; or

(b) Through contract by the school district with an individual, association, agency, organization, or other entity.

(6) Special education and related services provided to parentally placed private school students eligible for special education, including materials and equipment, must be secular, neutral, and nonideological.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-04085 Responsibility of the school district. (1) A school district that places a student eligible for special education with a nonpublic agency or with another private or public agency under WAC 392-172A-04080(2) for special education and related services shall develop a written contract or interdistrict agreement which will include, but not be limited to, the following elements:

(a) The names of the parties involved;

(b) The name(s) of the student(s);

(c) The location(s) and setting(s) of the services to be provided;

(d) A description of services provided, program administration and supervision;

(e) The charges and reimbursement including billing and payment procedures;

(f) The total contract cost;

(g) Any other contractual elements including those identified in WAC 392-121-188 that may be necessary to assure compliance with state and federal rules.

(2) Each school district must ensure that a student eligible for special education services placed in or referred to a nonpublic agency under WAC 392-172A-04080(1) or with another private or public agency under WAC 392-172A-04080(2) is provided special education and related services:

(a) In conformance with an IEP developed by the school district that meets the requirements of this chapter; and

(b) At no cost to the parents.

(3) The student shall be provided with a FAPE~~((except that the certificated teachers, including those with a special education endorsement, do not have to meet the highly qualified standards for core academic content areas under WAC 392-172A-01085))~~.

(4) The school district remains responsible for evaluations and IEP meetings for the student. If the school district requests that the nonpublic agency conduct evaluations or IEP meetings, the school district will ensure that all applicable requirements of Part B of the act are met.

(5) The student has all of the rights of a student eligible for special education who is served within the school district.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05000 Opportunity to examine records~~((**Parent participation in meetings**)). ((1))~~) The parents of a student eligible for special education must be afforded an opportunity to inspect and review all education records. Inspection and review of education records is provided consistent with WAC 392-172A-05180 through 392-172A-05245.

~~((2)(a) The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student.~~

~~(b) Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education have the opportunity to participate in meetings described in (a) of this subsection.~~

~~(c) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.~~

~~(3)(a) Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child.~~

~~(b) In implementing the requirements of (a) of this subsection, the school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3).~~

~~(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.~~

~~(d) A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.~~

~~(4) When conducting IEP team meetings and placement meetings and in carrying out administrative matters such as scheduling, exchange of witness lists and status conferences for due process hearing requests, the parent and the district may agree to use alternative means of meeting participation such as video conferences and conference calls.)~~

NEW SECTION

WAC 392-172A-05001 Parent participation in meetings. (1)(a) The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student.

(b) Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education have the opportunity to participate in meetings described in (a) of this subsection.

(c) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(2)(a) Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child.

(b) In implementing the requirements of (a) of this subsection, the school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3).

(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(d) A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.

(3) When conducting IEP team meetings and placement meetings and in carrying out administrative matters such as scheduling, exchange of witness lists and status conferences for due process hearing requests, the parent and the district may agree to use alternative means of meeting participation such as video conferences and conference calls.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05025 Procedures for filing a complaint. (1) An organization or individual, including an organization or individual from another state, may file with the OSPI, special education section, a written, signed complaint that the OSPI, or a subgrantee of the OSPI((;)) including, but not limited to, an ESD, school district, or other subgrantee is violating or has violated Part B of the Individuals with Disabilities Education Act or regulations implementing the act.

(2)(a) A written complaint filed with OSPI will include:

(i)(A) A statement that the agency has violated or is violating one or more requirements of Part B of IDEA including the state and federal regulations implementing the act; or

(B) A statement that the school district is not implementing a mediation agreement or a resolution agreement;

- (ii) The facts on which the statement is based;
 - (iii) The signature and contact information, including an address of the complainant; and
 - (iv) The name and address of the school district, or other agency subject to the complaint.
- (b) If the allegations are with respect to a specific student the information must also include:
- (i) The name and address of the student, or in the case of a homeless child or youth, contact information for the student;
 - (ii) The name of the school the student attends and the name of the school district;
 - (iii) A description of the nature of the problem of the student, including the facts relating to the problem; and
 - (iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) The complainant must send a copy of the complaint to the agency serving the student at the same time the complainant files the complaint with OSPI. Complaints under this chapter are filed with the ~~((director))~~ assistant superintendent of special education, OSPI.
- (d) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.
- (e) The OSPI has developed a form for use by persons or organizations filing a complaint. Use of the form is not required, but the complaint must contain the elements addressed in (a) and (b) of this subsection.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05140 Purpose. The purpose of WAC 392-172A-05140 through 392-172A-05175 is to ensure that students eligible for special education services are not improperly excluded from school for disciplinary reasons and are provided services in accordance with WAC 392-172A-05145, 392-172A-05148, and 392-172A-05149. Each school district shall take steps to ensure that each employee, contractor, and other agent is knowledgeable of the disciplinary procedures to be followed for students eligible for special education and students who may be deemed to be eligible for special education, and knowledgeable of the rules and procedures contained in chapter 392-400 WAC governing discipline for all students.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

WAC 392-172A-05145 Authority of school personnel. (1) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a student eligible for special education services, who violates a code of student conduct.

(2)(a) School personnel may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent

those alternatives are applied to students without disabilities under this section, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155.

(b) A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed. The services may be provided in an interim alternative educational setting.

~~(3) After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, and the removal is a change of placement under WAC 392-172A-05155, during any subsequent days of removal ((the school district must provide services to the extent required under subsection (4) of this section.~~

~~(3) When disciplinary changes in placement exceed ten consecutive school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to subsection (5) of this section, school personnel may apply the relevant disciplinary procedures to students eligible for special education in the same manner and for the same duration as a district would apply discipline procedures to students without disabilities, except that services shall be provided in accordance with subsection (4) of this section.~~

~~(4) A student who is removed from the student's current placement pursuant to subsection (3) or (7) of this section must:~~

~~(a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and~~

~~(b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.~~

~~(e) The services required by (a), (d), (e), and (f) of this subsection may be provided in an interim alternative educational setting.~~

~~(d) A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities who is similarly removed)) the student must continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The student's IEP team determines appropriate services. The services may be provided in an interim alternative educational setting.~~

~~((e))~~ (4) After a student eligible for special education has been removed from his or her current placement for ten

school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under WAC 392-172A-05155, during any subsequent days of removals, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The services may be provided in an interim alternative educational setting.

~~((f) If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate services under (a) of this subsection.~~

~~(5)(a) Within ten school days of any decision to change the placement of a student eligible for special education because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:~~

~~(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or~~

~~(ii) If the conduct in question was the direct result of the school district's failure to implement the IEP.~~

~~(b) The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's IEP team determine that a condition in (a)(i) or (ii) of this subsection was met.~~

~~(c) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the school district must take immediate steps to remedy those deficiencies.~~

~~(6) If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the IEP team must either:~~

~~(a) Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or~~

~~(b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and~~

~~(c) Except as provided in subsection (7) of this section, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.~~

~~(7) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:~~

~~(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district;~~

~~(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district; or~~

~~(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district.~~

~~(8) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice.~~

~~(9) Definitions. For purposes of this section, the following definitions apply:~~

~~(a) Controlled substance means a drug or other substance identified under Schedules I, II, III, IV, or V in Section 202(e) of the Controlled Substances Act (21 U.S.C. 812(e)).~~

~~(b) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that act or under any other provision of federal law.~~

~~(c) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.~~

~~(d) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of subsection (g) of Section 930 of Title 18, United States Code.)~~

NEW SECTION

WAC 392-172A-05146 Manifestation determination.

(1) Within ten school days of any decision to change the placement of a student eligible for special education because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(b) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the student's disability if the school district, the parent, and relevant members of the student's IEP team determine that a condition in subsection (1)(a) or (b) of this section was met.

If the school district, the parent, and relevant members of the student's IEP team determine the conduct was manifestation of the student's disability, the school district must take immediate steps to remedy those deficiencies.

NEW SECTION

WAC 392-172A-05147 Conduct is a manifestation of student's disability. If the school district, the parent, and rel-

evant members of the student's IEP team determine the conduct to be a manifestation of the student's disability, the IEP team must either:

(1) Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

(2) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(3) Except in special circumstances as described in WAC 392-172A-05149, return the student to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

NEW SECTION

WAC 392-172A-05148 Conduct is not a manifestation of student's disability. (1) When disciplinary changes in placement exceed ten consecutive school days, and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to WAC 392-172A-05146, school personnel may apply the relevant disciplinary procedures to students eligible for special education in the same manner and for the same duration as a district would apply discipline procedures to students without disabilities, except that services shall be provided in accordance with subsection (2) of this section.

(2) A student who is removed from the student's current placement pursuant to subsection (1) of this section must:

(a) Continue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(b) Receive, as appropriate when a student's removal is not a manifestation of the student's disability, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(3) The student's IEP team determines appropriate services.

(4) The services required may be provided in an interim alternative educational setting.

(5) The student's IEP team determines the interim alternative educational setting.

NEW SECTION

WAC 392-172A-05149 Special circumstances. (1) School personnel may remove a student to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

(a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district;

(b) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on

school premises, or at a school function under the jurisdiction of a school district; or

(c) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district.

(2) A student removed to an interim alternative educational setting under this section must: Continue to receive educational services that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP.

(a) The student's IEP team determines appropriate services.

(b) The student's IEP team determines the interim alternative educational setting.

(3) A student removed to an interim alternative educational setting under this section must receive a functional behavioral assessment and behavioral intervention services to the extent required in WAC 392-172A-05147 or 392-172A-05148.

(4) Definitions. For purposes of this section, the following definitions apply:

(a) Controlled substance means a drug or other substance identified under Schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(b) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that act or under any other provision of federal law.

(c) Serious bodily injury has the meaning given the term "serious bodily injury" under Section 1365 (h)(3) of Title 18, U.S.C.

(d) Weapon has the meaning given the term "dangerous weapon" under Section 930 (g)(2) of Title 18, U.S.C.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

**WAC 392-172A-05150 ((~~Determination of setting-~~)
~~Notification of change of placement.~~ ((The student's IEP team determines the interim alternative educational setting for services under WAC 392-172A-05145 (3), (4)(f) and (7)-)) On the date on which the decision is made to make a removal that constitutes a change of placement of a student eligible for special education because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents the procedural safeguards notice.**

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05160 Appeal of placement decisions and manifestation determinations. (1) The parent of a student eligible for special education who disagrees with any decision regarding placement under WAC 392-172A-05145 and 392-172A-05155, or the manifestation determination under WAC ((392-172A-05145(5))) 392-172A-05146, or a school district that believes that maintaining the current

placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a due process hearing. The hearing is requested by filing a due process hearing request pursuant to WAC 392-172A-05080 and 392-172A-05085.

(2)(a) An administrative law judge under WAC 392-172A-05095 hears, and makes a determination regarding an appeal under subsection (1) of this section.

(b) In making the determination under (a) of this subsection, the administrative law judge may:

(i) Return the student to the placement from which the student was removed if the administrative law judge determines that the removal was a violation of WAC 392-172A-05145 through 392-172A-05155 or that the student's behavior was a manifestation of the student's disability; or

(ii) Order a change of placement of the student to an appropriate interim alternative educational setting for not more than forty-five school days if the administrative law judge determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(c) The procedures under subsection (1) of this section and (b) of this subsection may be repeated, if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(3) Whenever a hearing is requested under subsection (1) of this section, the parents and the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of WAC 392-172A-05080 through 392-172A-05090 and 392-172A-05100 through 392-172A-05110, except:

(a) The due process hearing must be expedited, and must occur within twenty school days of the date the due process hearing request is filed. The administrative law judge must make a determination within ten school days after the hearing.

(b) Unless the parents and school district agree in writing to waive the resolution meeting described in (b)(i) of this subsection, or agree to use the mediation process:

(i) A resolution meeting must occur within seven days of receiving notice of the due process hearing request; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the receipt of the due process hearing request.

(4) The administrative hearing decisions on expedited due process hearings may be appealed, by initiating a civil action consistent with WAC 392-172A-05115.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05165 Placement during an appeal through a due process hearing. When either the parent or the school district requests a due process hearing, the student must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in WAC ((392-172A-05145 (3) or (7))) 392-172A-05148 or 392-172A-

05149, whichever occurs first, unless the parent and the school district agree otherwise.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-05170 Protections for students not determined eligible for special education and related services. (1) A student who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this chapter if the school district had knowledge as determined in accordance with subsection (2) of this section that the student was a student eligible for special education before the behavior that precipitated the disciplinary action occurred.

(2) Basis of knowledge. A school district must be deemed to have knowledge that a student is eligible for special education if before the behavior that precipitated the disciplinary action occurred:

(a) The parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(b) The parent of the student requested an evaluation of the student pursuant to WAC 392-172A-03005; or

(c) The teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.

(3) A school district would not be deemed to have knowledge under subsection (2) of this section if:

(a) The parent of the student:

(i) Has not allowed an evaluation of the student pursuant to WAC 392-172A-03000 through 392-172A-03080; or

(ii) Has refused services under this chapter; or

(b) The student has been evaluated in accordance with WAC 392-172A-03005 through 392-172A-03080 and determined to not be eligible for special education and related services under this part.

(4)(a) If a school district does not have knowledge that a student is eligible for special education prior to taking disciplinary measures against the student, the student may be disciplined using the same disciplinary measures applied to students without disabilities who engage in comparable behaviors consistent with (b) of this subsection.

(b)(i) If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under WAC 392-172A-05145, 392-172A-05148, or 392-172A-05149 the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion ((without educational services)).

(iii) If the student is determined to be eligible for special education services, taking into consideration information from the evaluation conducted by the school district and

information provided by the parents, the agency must provide special education and related services in accordance with this chapter and follow the discipline requirements, including the provision of a free appropriate public education for students suspended or expelled from school.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-05185 Notice to parents. (1) Parents of students eligible for special education have rights regarding the protection of the confidentiality of any personally identifiable information collected, used, or maintained under WAC 392-172A-05180 through 392-172A-05240, the Family Educational Rights and Privacy Act of 1974, as amended, state laws contained in Title 28A RCW that address personally identifiable information, regulations implementing state law, and Part B of IDEA.

(2) State forms, procedural safeguards and parent handbooks regarding special education are available in (~~Spanish, Vietnamese, Russian, Khmer, Ukrainian, Somali, and Korean~~) multiple languages, and alternate formats (~~on~~) upon request.

(3) Personally identifiable information about students for use by the OSPI, special education section, may be contained in state complaints, due process hearing requests and decisions, monitoring, safety net applications, and mediation agreements. The state may also receive personally identifiable information as a result of grant evaluation performance. This information is removed before forwarding information to other agencies or individuals requesting the information, unless the parent or adult student consents to release the information or the information is allowed to be released without parent consent under the regulations implementing the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

(4) School districts are responsible for child find activities for students who may be eligible for special education. If the state were to conduct any major identification, location, or evaluation activity, the state would publish notices in newspapers with circulation adequate to notify parents throughout the state of the activity, notify school districts and post information on its web site.

AMENDATORY SECTION (Amending WSR 15-18-077, filed 8/28/15, effective 9/28/15)

WAC 392-172A-06030 School wide programs under Title 1 of the (~~ESEA~~) ESSA. (1) A school district may use funds received under Part B of the act for any fiscal year to carry out a school wide program under (~~section 1114 of the Elementary and Secondary Education Act of 1965~~) 20 U.S.C. Section 6314, except that the amount used in any school wide program may not exceed:

(a) The amount received by the school district under Part B for that fiscal year; divided by the number of students eligible for special education in the jurisdiction; multiplied by

(b) The number of students eligible for special education participating in the school wide program.

(2) The funds described in subsection (1) of this section may be used without regard to WAC 392-172A-06010 (1)(a).

(3) The funds described in subsection (1) of this section must be considered as federal Part B funds for purposes of the calculations in WAC 392-172A-06015(2).

(4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that students eligible for special education in school wide program schools:

(a) Receive services in accordance with a properly developed IEP; and

(b) Are afforded all of the rights and services guaranteed to students eligible for special education under the IDEA.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

WAC 392-172A-06055 Records regarding migratory students eligible for special education. The school district must cooperate in the secretary's efforts under (~~section 1308 of the ESEA~~) 20 U.S.C. Section 6398 to ensure the linkage of records pertaining to migratory students eligible for special education for the purpose of electronically exchanging, among the states, health and educational information regarding those students.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-07035 Child count. The OSPI reports to the Secretary of the U.S. Department of Education (~~no later than February 1 of each year~~) annually as required by the office of special education programs the number of students aged three through twenty-one residing in the state who are receiving special education and related services. This report is based on the school districts' annual federal count of eligible students provided to OSPI on a date selected by OSPI between October 1st and December 1st of each year.

(1) Information required in the report includes:

(a) The number of students receiving special education and related services;

(b) The number of students aged three through five receiving special education and related services;

(c) The number of students aged six through seventeen, and eighteen through twenty-one within each disability category; and

(d) The number of students aged three through twenty-one for each year of age (three, four, five, etc.).

(2) For the purpose of this part, a student's age is the student's actual age on the date of the child count.

(3) A student may not be reported under more than one disability category.

(4) If a special education student has more than one disability, the student is reported as follows:

(a) A student with deaf-blindness and not reported as having a developmental delay must be reported under the category "deaf-blindness."

(b) A student who has more than one disability (other than deaf-blindness or developmental delay) must be reported under the category "multiple disabilities."

(5) School districts must provide OSPI a certification signed by an authorized official of the district, stating that the information provided by the district is an accurate and undu-

plicated count of special education students receiving special education and related services on the dates in question.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-172A-01045 Core academic subjects.
 WAC 392-172A-01085 Highly qualified special education teachers.
 WAC 392-172A-01110 Limited English proficient.

WSR 17-23-057
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING

[Filed November 9, 2017, 5:55 p.m., effective December 10, 2017]

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

Purpose: Standardize working connections child care authorization amounts for all participating families who need full- and part-time care and are using licensed child care providers or license-exempt/relative (family, friend, or neighbor) providers. Permanent rules are adopted in conjunction with final rules adopted under WSR 17-23-017.

Citation of Rules Affected by this Order: Amending WAC 170-290-0190.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Adopted under notice filed as WSR 17-20-111 on October 4, 2017.

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 the Request of a Non-governmental 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 0, Repealed 0.

Date Adopted: November 9, 2017.

Heather Moss
Director

AMENDATORY SECTION (Amending WSR 17-18-009, filed 8/24/17, effective 9/24/17)

WAC 170-290-0190 WCCC ((~~authorized and additional payments—Determining units of care~~)) benefit calculations. ((1) DSHS will authorize the following:

~~(a) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care between five and ten hours per day;~~

~~(b) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day;~~

~~(c) Hourly child care for in-home/relative child care;~~

~~(d) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means the following:~~

~~(i) For licensed care or certified facilities, twenty-three full-day units if the child needs five or more hours of care per day, or thirty half-day units if the child needs fewer than five hours of care per day; and~~

~~(ii) Two hundred thirty hours for in-home/relative child care if the child needs five or more hours of care per day or one hundred fifteen hours for in-home/relative child care if the child needs fewer than five hours of care per day. Supervisor approval is required for DSHS to authorize more than two hundred thirty hours of in-home/relative child care in a calendar month for a single child.~~

~~(e) A registration fee (under WAC 170-290-0245);~~

~~(f) A field trip fee (under WAC 170-290-0247);~~

~~(g) Special needs care when the child has a documented need for a higher level of care (under WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and~~

~~(h) A nonstandard hours bonus under WAC 170-290-0249.~~

~~(2) Beginning September 1, 2016, and applicable to school-age children, DSHS will authorize and pay for child care as follows:~~

~~(a) DSHS will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care;~~

~~(b) DSHS will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year until the following June. If the consumer's schedule has changed and more care is needed, the consumer must request an increase, and DSHS will verify the need for increased care. DSHS will send the consumer notification of the decrease as stated in WAC 170-290-0025; and~~

~~(c) Beginning October 1, 2017, DSHS will authorize one hundred fifteen hours of child care for the in-home/relative provider and DSHS will authorize additional contingency hours of care needed for the school-aged child by the in-home/relative provider when the child needs full-time care. Contingency hours will have a variable monthly limit and be available for each month of the calendar year. Supervisor approval is required when a school-aged child needs more than two hundred thirty hours of in-home/relative child care a month.~~

~~(3) DSHS may authorize up to the provider's private pay rate if:~~

~~(a) The parent is a WorkFirst participant; and~~

~~(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site.~~

~~"Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.~~

~~"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.~~

~~(4) DSHS authorizes overtime care if:~~

~~(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and~~

~~(b) The provider's written policy is to charge all families for these hours of care in excess of ten hours per day.~~

~~(5) In home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits cannot receive those benefits for their own children during the hours in which they provide subsidized child care.) (1) The amount of care a consumer may receive is determined by DSHS at application or reapplication. The consumer does not need to be in approved activities or a reported activity schedule, except at application or reapplication. Once the care is authorized, the amount will not be reduced during the eligibility period unless:~~

~~(a) The consumer requests the reduction;~~

~~(b) The care is for a school-aged child as described in subsection (3) of this section; and~~

~~(c) Incorrect information was given at application or reapplication according to WAC 170-290-0030.~~

~~(2) To determine the amount of weekly hours of care needed, DSHS will review:~~

~~(a) The consumer's participation in approved activities per WAC 170-290-0040, 170-290-0045, 170-290-0050, and 170-290-0055;~~

~~(b) The number of hours the child attends school, including home school, and reduce the amount of care;~~

~~(c) In a two parent household, the days and times the activities overlap, and only authorize care during those times;~~

~~(d) The parent, in a two parent household, who is not able to care for the child, as defined in WAC 170-290-0020, and exclude the activity requirements; and~~

~~(e) When a consumer requests and verifies the need for increased care, DSHS will increase the care for the remainder of the eligibility period.~~

~~**(3) Determining full-time care for a family using licensed providers:**~~

~~(a) Twenty-three full-day units per month will be authorized for one hundred ten hours of activity or more each month when the child needs care five or more hours per day;~~

~~(b) Thirty half-day units per month will be authorized for one hundred ten hours of activity or more each month when the child needs care less than five hours per day;~~

~~(c) Thirty half-day units per month will be authorized during the school year for a school-aged child who needs care less than five hours per day;~~

~~(d) Forty-six half-day units will be authorized during the months of July and August for a school-aged child who needs five or more hours of care;~~

~~(e) Twenty-three full-day units will be authorized during the school year for a school-aged child who needs care five or more hours per day;~~

(f) Supervisor approval is required for additional days of care that exceeds twenty-three full days or thirty half days; and

(g) Care cannot exceed sixteen hours per day, per child.

(4) Determining full-time care for a family using in-home/relative providers (family, friend and neighbors).

(a) Two hundred thirty hours of care will be authorized for one hundred ten hours of activity or more each month when the child needs care five or more hours per day;

(b) One hundred fifteen hours of care will be authorized for one hundred ten hours of activity or more each month when the child needs care less than five hours per day;

(c) One hundred fifteen hours of care will be authorized during the school year for a school-aged child who needs care less than five hours per day and the provider will be authorized contingency hours each month, up to a maximum of two hundred thirty hours;

(d) Two hundred thirty hours of care will be authorized during the school year for a school-aged child who needs care five or more hours in a day;

(e) Supervisor approval is required for hours of care that exceed two hundred thirty hours; and

(f) Care cannot exceed sixteen hours per day, per child.

(5) Determining part-time care for a family using licensed providers and the activity is less than one hundred ten hours per month.

(a) A full-day unit will be authorized for each day of care that exceeds five hours;

(b) A half-day unit will be authorized for each day of care that is less than five hours; and

(c) A half-day unit will be authorized for each day of care for a school-aged child, not to exceed thirty half days.

(6) Determining part-time care for a family using in-home/relative providers (family, friend and neighbors).

(a) Under the provisions of subsection (2) of this section, DSHS will authorize the number of hours of care needed per month when the activity is less than one hundred ten hours per month; and

(b) When the provider claims contingency hours, the total number of authorized hours and contingency hours claimed cannot exceed two hundred thirty hours per month.

(7) DSHS determines the allocation of hours or units for families with multiple providers based upon the information received from the parent.

(8) DSHS may authorize more than the state rate and up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site. "Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130. "Reasonable distance" is determined by comparing distances other local families must travel to access appropriate child care.

(9) Other fees DSHS may authorize to a provider are:

(a) Registration fees;

(b) Field trip fees;

(c) Nonstandard hours bonus;

(d) Overtime care to a licensed provider who has a written policy to charge all families, when care is expected to exceed ten hours in a day; and

(e) Special needs rates for a child.

(10) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits cannot receive those benefits for their own children during the hours in which they provide subsidized child care.

WSR 17-23-060

PERMANENT RULES

HORSE RACING COMMISSION

[Filed November 13, 2017, 8:13 a.m., effective December 14, 2017]

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

Purpose: Updates the public records section to comply with HB [EHB] 1595 regarding the cost of producing public records.

Citation of Rules Affected by this Order: Amending WAC 260-09-070.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 17-19-117 on September 20, 2017.

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 the Request of a Non-governmental 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: November 9, 2017.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 10-05-065, filed 2/12/10, effective 3/15/10)

WAC 260-09-070 Costs of providing copies of public records. (1) There is no fee for inspecting public records. (~~A requestor may obtain standard black and white photocopies for fifteen cents per page. (There is no charge for photocopies of twenty pages or less.)~~)

~~Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.~~

~~The commission will not charge sales tax when it makes copies of public records.~~

~~(2) Costs for electronic records. The cost of electronic copies of records shall be one dollar for information on a CD-ROM. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee.~~

~~(3) Costs of mailing. The commission may also charge actual costs of mailing, including the cost of the shipping container.~~

~~(4)) Pursuant to RCW 42.56.120(2), the Washington horse racing commission deems that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records. Staff resources are insufficient to perform a study and to calculate actual costs and a study would interfere with other essential agency functions.~~

~~(2) The Washington horse racing commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017.~~

~~(3) It is within the discretion of the public records officer to waive copying fees when all of the records responsive to the entire request are paper copies only and are fewer than twenty-five pages, or all of the records to an entire request are electronic and can be provided in a single email. If that email, for any reason, is not deliverable, the records will be provided through another means of delivery and the requestor will be charged in accordance with this rule.~~

~~(4) The public records officer may require an advance deposit of ten percent of the estimated fees, when copying fees for an installment or entire request exceeds twenty-five dollars.~~

~~(5) Payment. Payment may be made by cash, check, or money order to the Washington horse racing commission.~~

WSR 17-23-098

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 16-14—Filed November 15, 2017, 12:56 p.m., effective December 16, 2017]

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

Purpose: The department of ecology is adopting amendments to chapter 173-03 WAC, Public records, the purpose of this chapter is to implement the requirements of the Public Records Act including the process the agency uses for disclosing records. This update will modernize the rule to reflect current law, technology, and processes.

Citation of Rules Affected by this Order: Amending chapter 173-03 WAC.

Statutory Authority for Adoption: RCW 42.56.100 Protection of public records—Public access of the Public Records Act.

Adopted under notice filed as WSR 17-20-081 on October 3, 2017.

Changes Other than Editing from Proposed to Adopted Version: Not applicable, one typo was corrected.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 8, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 9, 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 0, Amended 0, Repealed 0.

Date Adopted: November 15, 2017.

Maia D. Bellon
Director

AMENDATORY SECTION (Amending WSR 98-16-052, filed 7/31/98, effective 8/31/98)

WAC 173-03-010 ((What is the) Purpose ((of this chapter?)). The purpose of this chapter is to implement the requirements of ((RCW 42.17.250—42.17.340 relating to)) The Public Records Act, chapter 42.56 RCW. The department adopts these rules to provide the fullest assistance to requestors and full access to the department's public records while protecting those records from damage or disorganization; preventing excessive interference with essential agency functions, including the agency's core environmental missions; and not unreasonably disrupting agency operations.

AMENDATORY SECTION (Amending WSR 98-16-052, filed 7/31/98, effective 8/31/98)

WAC 173-03-020 ((How are specific terms defined in this chapter?)) Definitions. (1) The terms ((("person,")) "public record((s))" and "writing" shall have the meanings as stated in RCW ((42.17.020)) 42.56.010.

(2) ((("Department)) Ecology) means the department of ecology.

(3) "Director" means the director of ((the department)) ecology.

(4) "Public records officer" means the employee designated ((as such)) by the ((department)) director under RCW 42.56.580(1) responsible for overseeing ecology's compliance with the Public Records Act.

(5) "Designee" means the employee of ((the department)) ecology designated by the director or the public records officer to serve as the public records coordinator at the headquarters offices or at each of the regional offices in the absence of the officer.

AMENDATORY SECTION (Amending WSR 98-16-052, filed 7/31/98, effective 8/31/98)

WAC 173-03-030 ((How is the department of ecology organized?)) Agency description—Contact information—Public records officer. ((†) Headquarters office.

~~(a) The headquarters office is located at 300 Desmond Drive, Lacey, Washington. The mailing address for the headquarters office is:~~

~~Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600~~

~~The mailing address for the nuclear waste management program's Hanford project is:~~

~~Nuclear Waste Management
1315 W. 4th Ave.
Kennewick, WA 99336~~

~~(b) The offices of the director, deputy director(s), program managers and other agency officials are located in the headquarters office.~~

~~(c) The titles of the executive staff are as follows:~~

~~Chief financial officer for financial services.
Administrative services manager for administrative services.
Director for intergovernmental relations.
Director for employee services.
Director for communications and education.
Assistant administrator for spills prevention, preparedness and response.~~

~~(2) The program offices located in the headquarters office are:~~

~~(a) Air quality;
(b) Water resources;
(c) Water quality;
(d) Toxics cleanup;
(e) Nuclear waste;
(f) Solid waste and financial assistance;
(g) Hazardous waste and toxics reductions;
(h) Environmental investigations and laboratory services; and
(i) Shorelands and environmental assistance.~~

~~(3) Regional offices and their geographical jurisdictions are as follows:~~

~~(a) Northwest regional office (Whatcom, Skagit, Snohomish, San Juan, Island, King, and Kitsap counties):~~

~~3190—160th Avenue S.E.
Bellevue, WA 98008-5452~~

~~(b) Southwest regional office (Pierce, Thurston, Mason, Clallam, Jefferson, Grays Harbor, Pacific, Lewis, Cowlitz, Wahkiakum, Clark, and Skamania counties):~~

~~300 Desmond Drive
Lacey, WA 98503
Mailing address:
P.O. Box 47775
Olympia, Washington 98504-7775~~

~~(c) Central regional office (Okanogan, Chelan, Douglas, Kittitas, Yakima, Benton, and Klickitat counties):~~

~~15 West Yakima, Suite 200
Yakima, WA 98902-3401~~

(d) Eastern regional office (Ferry, Stevens, Pend Oreille, Grant, Lincoln, Spokane, Adams, Whitman, Franklin, Walla Walla, Columbia, Garfield, and Asotin counties):

N. 4601 Monroe, Suite 100

Spokane, Washington 99205-1295)) (1) The department

of ecology is an agency headed by a director appointed by the governor subject to confirmation by the senate. The powers and duties of the director are described in chapter 43.21A RCW. Ecology effectively manages air and water resources and implements a coordinated pollution control program for air, water, and land resources. More information on ecology's functions and organization can be found at its web site at www.ecology.wa.gov.

(2) Ecology's headquarters administrative office is located at: 300 Desmond Dr. S.E., Lacey, WA 98503.

(3) Ecology's public records officer may be contacted at the following mailing address, telephone number, or email address:

Public Records Officer
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
360-407-6040
Recordsofficer@ecy.wa.gov

Information and records are also available at the ecology web site at www.ecology.wa.gov. Requestors are encouraged to view the information and documents available on the web site prior to contacting the public records officer.

(4) The name of the current public records officer is on file with the code reviser in accordance with RCW 42.56.580 and is published in the Washington State Register which is available online at www.leg.wa.gov/codereviser.

The public records officer will oversee compliance with the act but another ecology staff member may process the request. The public records officer or designee will provide fullest assistance to requestors and prevent fulfilling public records requests from causing excessive interference with ecology's essential functions.

AMENDATORY SECTION (Amending WSR 98-16-052, filed 7/31/98, effective 8/31/98)

WAC 173-03-050 ((What records are retained and how are they indexed?)) Records index. The records retention schedule established by the division of state archives of the office of the secretary of state serves as an index for the identification and location of ((the following records:

(1) All records issued before July 1, 1990, for which the department has maintained an index;

(2) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and that contain an analysis or decision of substantial importance to the department in carrying out its duties;

(3) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the department in carrying out its duties; and

(4) Interpretive statements as defined in RCW 34.05.010 (8) that were entered after June 30, 1990)) ecology's records including those described in RCW 42.56.070(5).

The records retention schedule indexes records according to the originating program or section, and then the record series title. Each title is further identified by a statement of function or purpose, and the retention period. The records retention schedule is available to the public for inspection and copying. With the assistance of the public records officer or designee, any person can obtain access to ecology's public records ((of the department)) using the records retention schedule.

((A separate index of)) Policy statements and interpretive statements as defined in RCW 34.05.010(((4))) entered after June 30, 1990, ((shall be maintained by the department's policy manual coordinator or designees)) are indexed by number and subject matter and are available on the agency's web site.

AMENDATORY SECTION (Amending WSR 98-16-052, filed 7/31/98, effective 8/31/98)

WAC 173-03-060 ((How do I request a public record?)) Requests for public records. (((1) All requests for inspection or copying made in person at a department office shall be made on a form substantially as follows:

REQUEST FOR PUBLIC RECORDS

Date of Request Time of Request

Name

Address

Description of Records:

I understand that if a list of individuals is provided me by the Department of Ecology, it will neither be used to promote the election of an official nor promote nor oppose a ballot proposition as prohibited by RCW 42.17.130 nor for commercial purposes nor give or provide access to material to others for commercial purposes as prohibited by RCW 42.17.260(9).

I understand that I will be charged the amount necessary to reimburse the department's cost for copying.

Signature

Number of pages to be copied
Number of copies per page
Charge per copy \$
Special copy work charge \$
Staff time charge \$
Total charge \$

(2) You may request records in person at a department of ecology office between the hours of 8:00 a.m. to 12:00 noon and 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

(3) If you make your request by mail, your request must contain the following information:

(a) The name and address of the person making the request and the organization the person represents;

(b) The time of day and calendar date on which the person wishes to inspect the public records;

(c) A description of the public records requested;

(d) A statement whether access to copying equipment is desired;

(e) A phone number where the person can be reached in case the public records officer or designee needs to contact the person for further description of the material or any other reason.

(f) A statement that the record will not be used for commercial purposes.

(4) The department must receive all requests at least five business days before the requested date of inspection to allow the public records officer or designee to make certain the requested records are available and not exempt and, if necessary, to contact the person requesting inspection. The department will process all requests in a timely manner. However, large requests or requests for public records maintained off-site may require more than five business days to prepare. The department will respond to your request within five business days of receiving it, by either:

(a) Providing the record;

(b) Acknowledging that the department has received the request and providing a reasonable estimate of the time the department will require to respond to the request; or

(c) Denying the public record request.

Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the department may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency need not respond to it.

(5) ~~The department may in its discretion fill requests made by telephone or facsimile copy (fax).)~~ All requests under the Public Records Act to inspect or copy public records shall be in writing and directed to the agency public records officer at the email address or mailing address set forth in WAC 173-03-030(3) or via online submission on ecology's web site if available. The request shall include the following information:

(1) The requestor's name, email address or mailing address, and telephone number; and

(2) A request for identifiable records. An identifiable public record is one for which the requestor has given a reasonable description enabling ecology to locate the requested record(s).

NEW SECTION

WAC 173-03-065 Responses to public records requests. (1) Ecology will respond to a request within five business days of receipt, by either:

(a) Providing the record(s);

(b) Providing an internet address and link to the record(s) on an ecology web site;

(c) Acknowledging that ecology has received the request, asking for clarification to the extent the request is unclear, and providing a reasonable estimate of the time ecology will require to respond to the request if not clarified; or

(d) Denying the public record request.

(2) Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, ecology may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request within ten business days, ecology need not respond to it and will close the request.

(3) Ecology will process requests in the order in which they are received. Ecology may modify this approach as necessary to ensure that requests which seek larger volumes of records, require closer review, or are otherwise more time consuming, do not unreasonably delay simpler, more routine requests.

(4) When it appears that the number of records responsive to a request may be large, that the process of locating, assembling, or reviewing the records may be lengthy, or that it is otherwise appropriate, ecology may choose to provide records on a partial or installment basis. Ecology need not locate and assemble records responsive to a subsequent installment until the previous installment is claimed or inspected. If an installment is not claimed or inspected within ten business days of notice of availability, the agency need not respond further and will close the request.

(5) When electronic records are requested, ecology will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or, at ecology's discretion, in a format that is reasonably translatable from the format in which the agency keeps the records. Ecology is under no obligation to convert electronic records to a specific format identified by the requestor. When metadata is requested, ecology will provide the records in a native file format that preserves metadata where technically feasible. Metadata may be unavailable for records that require conversion to a nonnative format in order to apply exemptions.

AMENDATORY SECTION (Amending WSR 98-16-052, filed 7/31/98, effective 8/31/98)

WAC 173-03-070 ((How much will it cost me to view a public record?)) Costs of providing public records. ((The department)) (1) Ecology does not charge a fee for the inspection of public records. ((The department will charge an

amount necessary to reimburse its costs for providing copies of records. This amount shall be reviewed from time to time by the department, and shall represent the costs of providing copies of public records and for use of the department's copy equipment, including staff time spent copying records, preparing records for copying, and restoring files. This charge is the amount necessary to reimburse the department for its actual costs for copying and is payable at the time copies are furnished. The charge for special copy work of nonstandard public records shall reflect the total cost, including the staff time necessary to safeguard the integrity of these records.)

(2) Pursuant to RCW 42.56.120(2), ecology declares for the following reasons that it would be unduly burdensome to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions. Ecology may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120 and as published in ecology's fee schedule available on the ecology web site at www.ecology.wa.gov.

(3) Ecology will charge the actual amount charged by an external vendor for records copied by an external vendor including records in nonstandard sizes or formats as published in ecology's fee schedule available on the ecology web site at www.ecology.wa.gov.

(4) Before copying public records, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all of the records. The public records officer or designee may also require payment of the remainder of the copying costs before providing all of the records, or the payment of costs of copying an installment before providing the installment.

(5) At ecology's sole discretion, ecology may provide customized electronic access to public records if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by ecology for other agency purposes. Ecology will charge the actual costs, including staff time, necessary to reimburse the agency for providing customized electronic access services.

(6) Ecology will not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth in this section.

(7) Ecology may waive any charges for providing public records at the discretion of the public records officer. This determination will be made on a case-by-case basis.

NEW SECTION

WAC 173-03-075 Notice of availability. (1) Once records responsive to a request or any installment thereof have been located, assembled, reviewed, and prepared for release, and any affected third persons or agencies notified, ecology will notify the requestor that those records are available for inspection or copying.

(2) The notice of availability will state any costs for obtaining copies of the records and any other allowable costs under WAC 173-03-070 or the Public Records Act.

(3) Upon receipt of a notice of availability, the requestor may inspect records by scheduling a viewing appointment with the public records officer or designee or requesting copies.

(4) If, within ten business days of issuance of a notice of availability, the requestor fails to claim the records (or any installment thereof) by either scheduling a viewing appointment or requesting copies and making any required payment, ecology will close the request.

AMENDATORY SECTION (Amending WSR 98-16-052, filed 7/31/98, effective 8/31/98)

WAC 173-03-080 ~~((What happens when the department denies a public records request?))~~ Denial of public records request—Claim of exemption. When ((the department refuses)) ecology denies, in whole or part, a request for inspection of any public record, it must include a statement of the specific exemption authorizing the ((refusal)) denial and a brief explanation of how the exemption applies to the record withheld.

AMENDATORY SECTION (Amending WSR 98-16-052, filed 7/31/98, effective 8/31/98)

WAC 173-03-090 ~~((What do I do if I object to the department's denial to review a public record?))~~ Review of denial of public records request—Claim of exemption.

(1) ~~((Any person))~~ A requestor who objects to the ((refusal)) denial of a request for a public record may petition for prompt review of that decision by submitting a written request for review to the public records officer at the email address or mailing address set forth in WAC 173-03-030(3). The written request shall specifically refer to the written statement by the public records officer or designee which constituted or accompanied the ((refusal)) denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer ~~((or other staff member denying the request))~~ shall refer it to the director or the director's delegate. The director or delegate shall immediately consider the matter and either affirm or reverse the ((refusal. The final decision shall be sent to the objecting person)) denial. Within two business days following receipt of the petition for review the director or delegate will notify the requestor of the decision or notify the requestor that more time is required to consider the petition.

AMENDATORY SECTION (Amending WSR 98-16-052, filed 7/31/98, effective 8/31/98)

WAC 173-03-100 ~~((How does the department protect public records?))~~ Protection of public records. In order to adequately protect ((the)) ecology's public records ((of the department, you)), requestors must comply with the following guidelines while inspecting public records:

(1) ~~((You))~~ Requestors may not remove any public record from ((the department's)) ecology's premises.

(2) ~~((You))~~ Requestors must have a designated ~~((department))~~ ecology employee present while ~~((you are))~~ inspecting a public record.

(3) ~~((You))~~ Requestors may not mark or deface a public record in any manner during inspection.

(4) ~~((You))~~ Requestors may not dismantle public records which are maintained in a file or jacket, or in chronological or other filing order, or those records which, if lost or destroyed, would constitute excessive interference with ~~((the department's))~~ ecology's essential functions.

(5) Access to file cabinets, shelves, vaults, or other storage areas is restricted to ~~((department))~~ ecology personnel, unless other arrangements are made with the public records officer or designee.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-03-040 How do I get access to the public records of the department of ecology?

WSR 17-23-100

PERMANENT RULES

EDMONDS COMMUNITY COLLEGE

[Filed November 15, 2017, 1:52 p.m., effective December 16, 2017]

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

Purpose: The purpose of these proposed rules is to establish procedures for the use of college facilities for first amendment activities for both college and noncollege groups. The rules were drafted by attorneys representing the Washington state community and technical colleges system for colleges to adopt as written or customize to meet their needs. The proposed policy was vetted to various campus stakeholders. The policy establishes clear procedures and requirements in order to use Edmonds Community College without disrupting the educational process.

Citation of Rules Affected by this Order: New WAC 132Y-136-010, 132Y-136-020, 132Y-136-030, 132Y-136-040, 132Y-136-050, and 132Y-136-060.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 17-18-081 on September 5, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 6, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, 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: November 14, 2017.

Dennis Curran
Associate Vice President
for Human Resources

USE OF COLLEGE FACILITIES FOR FIRST AMENDMENT ACTIVITIES—EDMONDS COMMUNITY COLLEGE

NEW SECTION

WAC 132Y-136-010 Statement of purpose. Edmonds Community College is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals the right to substantially interfere with, or otherwise disrupt the normal activities for and to which the college's facilities and grounds are dedicated. Accordingly, the college is a designated public forum opened for the purposes recited herein and further subject to the time, place, and manner provisions set forth in these rules.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression.

The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college intends to open its campus to noncollege groups to the extent that the usage does not conflict with the rights of college groups or substantially disrupt the educational process.

NEW SECTION

WAC 132Y-136-020 Definitions. (1) "College facilities" includes all land, buildings, facilities, structures, grounds, office space, parking lots and other property in the possession of, owned, controlled, or leased/rented by the college, and agencies or institutions that have educational agreements with the college, including associated web sites and distance learning classroom environments.

(2) "College group" means individuals who are currently enrolled students or current employees of Edmonds Community College or guests of the college who are sponsored by a recognized student organization, employee organization, or the administration of the college.

(3) "First Amendment activities" includes, but is not limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-mak-

ing, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspectives or viewpoints.

(4) "Noncollege group" means individuals, or combinations of individuals, who are not currently enrolled students or current employees of Edmonds Community College or who are not officially affiliated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

(5) "Public forum areas" means those areas of the campus that the college has designated as places for expressive activities protected by the First Amendment, subject to reasonable time, place, or manner provisions.

(6) "Sponsor" means that when a college group invites a noncollege group onto campus, the college group will be responsible for the activity and will designate an individual to be present at all times during the activity. The sponsor will ensure that those participating in the sponsored activity are aware of the college's rules and policies governing the activity. This definition does not apply to noncollege groups that rent college facilities.

NEW SECTION

WAC 132Y-136-030 Use of facilities. (1) There shall be no camping on college facilities or grounds between the hours of 9:00 p.m. and 7:00 a.m. Camping is defined to include sleeping, cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(2) Any sound amplification device may only be used at a volume which does not disrupt the normal use of classrooms, offices or laboratories, or any previously scheduled college event or activity.

(3) College groups are encouraged to notify the center for student engagement/leadership no later than forty-eight hours in advance of the activity. However, unscheduled activities are permitted so long as the activity does not displace any other activities occurring at the college.

(4) All sites used for First Amendment activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the activity. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

(5) All college and noncollege groups must comply with fire, safety, sanitation or special regulations specified for the activity. The college cannot and will not provide utility connections or hookups for purposes of First Amendment activities conducted pursuant to this policy.

(6) The activity must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, college buildings or facilities, or college activities. The activity must not create safety hazards or pose safety risks to others.

(7) The activity must not substantially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and

achieving its primary purpose of providing an education to its students. The activity must not substantially infringe on the rights and privileges of college students, employees or invitees to the college.

(8) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club.

(9) The activity must also be conducted in accordance with any other applicable college policies and rules, college, local ordinances, state, and federal laws.

NEW SECTION

WAC 132Y-136-040 Additional requirements for noncollege groups. (1) College facilities may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities as identified in these rules.

(2) The college designates on the campus map its grounds and outdoor spaces as the public forum area(s) for use by noncollege groups for First Amendment activities on campus. Nothing in these rules prohibits noncollege groups from engaging in First Amendment activities at open public meetings, subject to the requirements of RCW 42.30.050.

(3) Noncollege groups may use the public forum areas for First Amendment activities between the hours of 7:00 a.m. and 9:00 p.m., and for no longer than five hours from beginning to end.

(4) Before engaging in First Amendment activities, all noncollege groups are encouraged to provide notice to and register with campus safety and security no later than forty-eight hours prior to the activity of the noncollege group's presence on campus and to acknowledge receipt of these rules and to ensure that there are not scheduling conflicts. The notice does not involve any application or approval process, and therefore, the ability to use designated public forum areas will not be denied unless they are already reserved for use by another group. This notice is intended to provide the college with knowledge of the noncollege group's presence on campus so that the college can notify the appropriate members of its staff whose services might be needed or impacted by the use of the designated public forum area. When registering, the individual or group should provide the following information:

(a) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization");

(b) The name, address and telephone number of a contact person for the sponsoring organization;

(c) The date, time and requested location of the activity;

(d) The type of sound amplification devices to be used in connection with the activity, if any; and

(e) The estimated number of people expected to participate in the activity.

NEW SECTION

WAC 132Y-136-050 Distribution of materials. Information may be distributed as long as it is not obscene or does not promote the imminent prospect of actual violence or harm. The distributor is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only on the grounds and outside spaces of the campus designated as public forum areas.

NEW SECTION

WAC 132Y-136-060 Consequences for violation of provisions in this chapter. (1) Noncollege groups who violate these rules will be advised of the specific nature of the violation, and if they persist in the violation, will be subject to an order from the college public safety department to leave the college campus. Such a request will be deemed to withdraw the license or privilege to enter onto or remain upon any portion of the college premises of the person or group of persons requested to leave, and subject such individuals to the provisions of chapter 9A.52 RCW or municipal ordinance. Persons failing to comply with such an order to leave the college or reentering college property after one's license or privilege to be on college property has been revoked shall constitute trespass and such individual shall be subject to criminal trespass proceedings.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or department for action in accordance with established college policies.

WSR 17-23-112**PERMANENT RULES****BELLINGHAM TECHNICAL COLLEGE**

[Filed November 16, 2017, 12:39 p.m., effective December 17, 2017]

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

Purpose: In response to recent legislation relating to costs associated with responding to public records requests, WAC 495B-276-090 needed to be amended to be in compliance of state mandates.

Citation of Rules Affected by this Order: Amending WAC 495B-276-090.

Statutory Authority for Adoption: RCW 28B.50.130.

Other Authority: EHB 1595.

Adopted under notice filed as WSR 17-19-072 on September 15, 2017.

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 the Request of a Non-governmental 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: November 16, 2017.

Ronda Laughlin
Executive Assistant
to President

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-276-090 ((Copying)) Charges for public records. ~~((No fee shall be charged for the inspection of public records. The district may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records and such charges shall not exceed the amount necessary to reimburse the district for its actual costs incident to such copying. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate district official.))~~ (1) Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce college resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records.

(2) Instead of calculating the actual costs of charges for records, the college president or designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the college charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b).

(3) The college may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor.

(4) The college may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

All charges must be paid by money order, cashier's check, or cash in advance.

WSR 17-23-113
PERMANENT RULES
BELLINGHAM TECHNICAL COLLEGE

[Filed November 16, 2017, 12:40 p.m., effective December 17, 2017]

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

Purpose: Amendments to WAC 495B-140-020, 495B-140-040, 495B-140-045, 495B-140-060, 495B-140-070 and 495B-140-080 of chapter 495B-140 WAC, Use of college facilities, to address free speech on campus; firearms or weapons on campus; use of tobacco, electronic cigarettes and related products; and to align with recent changes made to the Bellingham Technical College student conduct code, chapter 495B-121 WAC.

Citation of Rules Affected by this Order: Amending WAC 495B-140-020, 495B-140-040, 495B-140-045, 495B-140-060, 495B-140-070, and 495B-140-080.

Statutory Authority for Adoption: RCW 28B.50.130.

Adopted under notice filed as WSR 17-17-076 on August 15, 2017.

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 6, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: November 16, 2017.

Ronda Laughlin
Executive Assistant
to President

AMENDATORY SECTION (Amending WSR 12-21-061, filed 10/17/12, effective 11/17/12)

WAC 495B-140-020 Limitation of use to college activities. (1) When allocating use of college facilities, the highest priority is always given to activities specifically related to the college's mission. No arrangements will be made that may interfere with or operate to the detriment of, the college's own teaching, research, or public service programs. In particular, college buildings, properties, and facilities, including those assigned to student programs, are used primarily for:

(a) The regularly established teaching, research, or public service activities of the college and its departments;

(b) Cultural, educational, or recreational activities of the students, faculty, or staff;

(c) Short courses, conferences, seminars, or similar events, conducted either in the public service or for the advancement of specific departmental professional interests,

when arranged under the sponsorship of the college or its departments((-));

(d) Public events of a cultural or professional nature brought to the campus at the request of college departments or committees and presented with their active sponsorship and active participation;

(e) Activities or programs sponsored by educational institutions, by state or federal agencies, by charitable agencies or civic or community organizations whose activities are of widespread public service and of a character appropriate to the college.

(2) College facilities shall be assigned to student organizations for regular business meetings, social functions and for programs open to the public. Any recognized campus student organization may invite speakers from outside the college community. The appearance of an invited speaker on campus does not represent an endorsement by the college, its students, faculty, administration, or the board of trustees, implicitly or explicitly, of the speaker's views.

(a) Student organizations officially recognized by the college may invite speakers to the campus to address their own membership and other interested students and faculty if suitable space is available and there is no interference with the regularly scheduled program of the college. Although properly allowed by the college, the appearance of such speakers on the campus implies neither approval nor disapproval of them or their viewpoints. In case of speakers who are candidates for political office, equal opportunities shall be available to opposing candidates if desired by them. Speakers are subject to the normal consideration for law and order and to the specific limitations imposed by the state constitution regarding religious worship, exercise, or instruction on state property.

(b) In order to ensure an atmosphere or open exchange and to ensure that the educational objectives of the college are not obscured, the president, in a case attended by strong emotional feeling, may prescribe conditions for the conduct of the meeting including, but not limited to, the time, the manner, and the place for the conduct of such a meeting. Likewise, the president may require permission for comments and questions from the floor and/or may encourage the appearance of one or more additional speakers at a meeting or at a subsequent meeting so that other points of view may be expressed.

(3) Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to ensure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Arrangements by both organizations and individuals must be made through the designated administrative officer. Allocation of space shall be made in accordance with college rules and on the basis of time, space, priority of request and the demonstrated needs of the applicant.

(4) The college may restrict an individual's or a group's use of college facilities if that person or group has, in the past, physically abused college facilities. Monetary charges may be imposed for damage or for any unusual costs for the use of facilities. The individual, group or organization requesting

space will be required to state in advance the general purpose of any meeting.

(5) Commercial activities. College facilities will not be used for any commercial solicitation, advertising or promotional activities, except when such activities clearly serve an educational objective including, but not limited to, the display of books of interest to the academic community or the display or demonstration of technical or research equipment and when such commercial activities relate to educational objectives and are conducted under the sponsorship or at the request of the college or the student association if such solicitation does not interfere with or operate to the detriment of the conduct of college affairs or the free flow of vehicular or pedestrian traffic. For the purpose of this regulation, the term "commercial activities" does not include handbills, leaflets, newspapers, and similarly related materials as regulated in WAC 495B-140-045.

AMENDATORY SECTION (Amending WSR 12-21-061, filed 10/17/12, effective 11/17/12)

WAC 495B-140-040 General policies limiting use. (1) College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student-sponsored activities or forums as provided for in WAC 495B-140-020.

(2) Religious groups shall not, under any circumstances, use the college facilities as a permanent meeting place. Use may be intermittent only.

(3) The college reserves the right to prohibit the use of college facilities by groups which restrict membership or participation in a manner inconsistent with the college's commitment to nondiscrimination as set forth in its written policies and rules.

(4) Activities of a political or commercial nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside the rooms or facilities to which access has been granted.

(5) These rules shall apply to college and noncollege groups using college facilities.

(6) Use of audio amplifying equipment such as bullhorns, microphones, or loud speakers is not permitted. Exceptions can be made by college administration in locations and at times which will not interfere with the normal conduct of college affairs as determined by the appropriate administrative officer.

(7) No person or group may use or enter onto college facilities having in their possession firearms or weapons, except as prescribed by law. Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive devices, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) Individuals with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in

accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self defense.

(8) The right of peaceful dissent within the college community will be preserved. The college retains the right to take steps to insure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is not a legitimate means of dissent. Should any person, group or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.

(9) Interference with free passage of vehicles, cyclists, pedestrians, or other traffic through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits and is not permitted. The event must not create safety hazards or pose unreasonable safety risks to college students, employees, or invitees of the college.

(10) Groups must obey and comply with directions of the designated college administrator or individual in charge of the meeting.

(11) If a college facility abuts a public area or street, and if group activity, although on public property, unreasonably interferes with ingress and egress to college buildings, or creates a disruption for the neighbors bordering the college, the college may choose to impose its own sanctions although remedies might also be available through local law enforcement agencies.

(12) Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

(13) College groups are asked to obtain authorization from the designated administrator no later than twenty-four hours in advance of an event.

(14) College group events shall not last longer than eight hours from beginning to end. Noncollege group events shall not last longer than five hours from beginning to end.

(15) The college has designated an area as the sole limited public forum area for first amendment activities on campus. This area is identified in the college facilities use policy and may change from time to time as decided by the college president.

(16) All sites must be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for extraordinary costs including, but not limited to, clean-up, security, or for the repair or replacement of damaged property.

(17) All fire, safety, sanitation, or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups.

(18) Subject to the regulations of this policy, both college and noncollege groups may use the campus limited forums for first amendment activities between the hours of 7:00 a.m. and 10:00 p.m. throughout the year except during the following days of the year:

- (a) The first week and the final exam week of each term;
- (b) Advising day;
- (c) Kickoff and convocation weeks, or in other words, the two weeks immediately preceding each quarter;
- (d) Campus events.

(19) There shall be no overnight camping on college facilities or grounds, including off-campus facilities owned or leased by the college. Camping is defined to include sleeping outside, sleeping in vehicles, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation. However, the college president or designee is authorized to make exceptions in the case of college sponsored events and/or instructional activities.

(20) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

- (a) Such activities serve educational purposes of the college; and
- (b) Such activities are under the sponsorship of a college department or office or officially chartered student club.

(21) The event must also be conducted in accordance with any other applicable college policies and regulations, college, local ordinances, and state or federal laws.

(22) The college president or designee is authorized to make exceptions to the policies limiting use in the case of college sponsored events and/or instructional activities.

(23) Free movement on campus. The president is authorized to prohibit the entry of or to withdraw the privileges of any person or group of persons to enter onto or remain upon any portion of the college campus if he/she deems that an individual or group of individuals disrupts the ingress or egress of others from the college facilities. The president may act through the vice president of administrative services or any other person he/she may designate.

AMENDATORY SECTION (Amending WSR 12-21-061, filed 10/17/12, effective 11/17/12)

WAC 495B-140-045 Distribution of materials. Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site designated for noncollege groups and as authorized by the college. Any distribution of materials as authorized by the designated administrative officer shall not be construed as support or approval of the content by the college community or the board of trustees.

(1) Handbills, leaflets, newspapers and similar materials may be distributed free of charge by any student or students,

or by members of recognized student organizations at locations specifically designated by the vice president of student services, provided such distribution does not interfere with the ingress or egress of persons or interfere with the instructional process or the free flow of vehicular or pedestrian traffic.

(2) Such handbills, leaflets, newspapers and related matter must bear identification as to the publishing agency and distributing organization or individual.

(3) All nonstudents shall register with the vice president of student services prior to the distribution of any handbill, leaflet, newspaper or related matter. Such distribution must not interfere with the instructional process or the free flow of vehicular or pedestrian traffic.

(4) Any person or persons who violate provisions of subsections (1) and (2) or (3) of this section will be subject to disciplinary action.

AMENDATORY SECTION (Amending WSR 12-21-061, filed 10/17/12, effective 11/17/12)

WAC 495B-140-060 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate these rules will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the president, or his or her designee, to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college facilities by the person or group of persons requested to leave. Such persons shall be subject to arrest under the provisions of chapter 9A.52 RCW.

(2) Students who violate proscriptions within these regulations (chapter 495B-140 WAC) will be disciplined in accordance with the campus code of conduct (chapter 495B-120 WAC).

(3) Faculty and staff who violate proscriptions within these regulations (chapter 495B-140 WAC) will be disciplined in accordance with established college policies.

(4) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with these rules.

(5) Persons or groups who violate the law, a college policy or rule may have their license or privilege to be on school property revoked and be ordered to withdraw from and refrain from entering upon any college property. Remaining on or reentering college property after one's license or privilege to be on college property has been revoked shall constitute trespass and such individual shall be subject to arrest for criminal trespass.

~~((6) There shall be no overnight camping on college facilities or grounds, including off-campus facilities owned or leased by the college. Camping is defined to include sleeping, sleeping in a vehicle, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for the purpose of personal habitation. However, the college president or designee is authorized to make exceptions in the case of college sponsored events and/or instructional activities.))~~

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-140-070 Prohibited conduct at college facilities. (1) The use or possession of unlawful drugs or narcotics, not medically prescribed, or of intoxicants on college property or at college functions, is prohibited. Students obviously under the influence of intoxicants, unlawful drugs or narcotics while in college facilities are subject to disciplinary action.

(2) The use of tobacco is prohibited in accordance with health regulations. Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited including, twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college, except in designated areas. "Related products" include, but are not limited to, cigarettes, cigars, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, personal vaporizers, vape pens, electronic nicotine delivery systems and snuff.

(3) Destruction of property is also prohibited by state law in reference to public institutions.

AMENDATORY SECTION (Amending WSR 93-05-018, filed 2/10/93, effective 3/13/93)

WAC 495B-140-080 Control of pets in college facilities. Pets are not permitted in campus buildings or on the grounds except guide or service (~~dogs for the visually or hearing impaired~~) animals.

WSR 17-23-118
PERMANENT RULES
PARKS AND RECREATION
COMMISSION

[Filed November 17, 2017, 9:08 a.m., effective December 18, 2017]

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

Purpose: State parks has conducted a review of the WAC pertaining to the winter recreation program. The review resulted in minor changes and corrections to rules in order to bring rules up-to-date with current terminology, correction of references to statutes contained in the rules and completion of a general review for clarification, corrections and modifications.

Citation of Rules Affected by this Order: Amending WAC 352-56-060.

Statutory Authority for Adoption: Chapter 79A.05 RCW.

Adopted under notice filed as WSR 17-19-003 on September 7, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, 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: November 17, 2017.

Valeria Evans
Management Analyst

AMENDATORY SECTION (Amending WSR 83-13-033, filed 6/17/83)

WAC 352-56-010 Purpose. This chapter is promulgated in order to establish procedures by which the Washington state parks and recreation commission will administer grants and contracts supported by winter recreational program funds in accordance with chapter ~~((43-54))~~ 79A.05 RCW.

AMENDATORY SECTION (Amending WSR 83-13-033, filed 6/17/83)

WAC 352-56-020 Definitions. When used in this chapter the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise:

(1) "Commission" means the Washington state parks and recreation commission.

(2) "Director" means the director of the Washington state parks and recreation commission.

(3) "Trail" means a corridor described by location and length which is designated for nonsnowmobile winter recreational activities.

(4) "Use area" means an area described by boundary and acreage in which nonsnowmobile winter recreational activities are authorized.

(5) "Winter recreational" means nonsnowmobile winter recreational activities, facilities, or programs.

(6) "Winter recreational program funds" means the funds deposited in the winter recreational program account which are administered by the Washington state parks and recreation commission pursuant to this chapter and chapter ~~((43-54))~~ 79A.05 RCW.

AMENDATORY SECTION (Amending WSR 83-13-033, filed 6/17/83)

WAC 352-56-060 Funding priorities. The priorities for the distribution of winter recreational program funds by the commission shall be:

(1) Administration of a statewide winter recreational program which includes safety, education, and information programs;

- (2) Operation and maintenance of winter recreational parking areas designated by the commission;
- (3) Operation and maintenance of winter recreational use areas, trails, and other facilities which include an emergency reserve fund and an enforcement program;
- (4) Acquisition and replacement of equipment to support winter recreational programs;
- (5) Acquisition and development of new winter recreational facilities and equipment, trail maintenance, and services; and
- (6) Support of special winter recreational programs such as, but not limited to, increased law enforcement, safety education, and expanded signing.

AMENDATORY SECTION (Amending WSR 83-13-033, filed 6/17/83)

WAC 352-56-070 Disbursement of funds. Applicants for winter recreational program funds, whose requests are approved by the commission, may receive funds:

- (1) On a reimbursement basis after a billing which indicates satisfactory compliance with a contract has been filed with the commission; or
- (2) Through an advance payment upon a written request to and approval by the director.

WSR 17-23-119
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed November 17, 2017, 9:15 a.m., effective December 18, 2017]

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

Purpose: WAC 246-292-060 Minimum education and experience requirements to become a certified operator. The rule making modifies experience requirements to increase the number of certified operators available to operate Group A public water systems.

Citation of Rules Affected by this Order: Amending WAC 246-292-060.

Statutory Authority for Adoption: RCW 70.119.050.

Adopted under notice filed as WSR 17-19-029 on September 11, 2017.

A final cost-benefit analysis is available by contacting Theresa Phillips, P.O. Box 47820, Olympia, WA 98504-7820, phone 360-236-3147, TTY 360-833-6388 or 711, email theresa.phillips@doh.wa.gov, web site <https://www.doh.wa.gov/CommunityandEnvironment/DrinkingWater>.

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 the Request of a Non-governmental 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: November 16, 2017.

John Wiesman, DrPH, MPH
 Secretary

AMENDATORY SECTION (Amending WSR 14-01-003, filed 12/4/13, effective 1/4/14)

WAC 246-292-060 Minimum education and experience requirements to become a certified operator. (1) Minimum education and operating experience requirements for a water treatment plant operator are in Table 5.

Table 5
WTPO Minimum Education and Experience Requirements

Certification Level	Minimum Education Requirement (see Table 7 for equivalents)	Minimum Experience Requirement
((WTPO - OIT	12 years	One of the following: <ul style="list-style-type: none"> • 3 months operating experience in a water treatment plant or distribution system; • 3 months water-related experience; or • 30 hours of relevant water system training (3 CEUs or 3 college credits).)
WTPO 1	12 years	12 months <u>operating</u> experience in a water treatment plant.
WTPO 2	12 years	<ul style="list-style-type: none"> • 18 months operating experience in a water treatment plant; and • 18 months additional water-related experience. • Relevant excess education may substitute for additional <u>water-related</u> experience requirement.

Certification Level	Minimum Education Requirement (see Table 7 for equivalents)	Minimum Experience Requirement
WTPO 3	14 years	<ul style="list-style-type: none"> • 24 months operating experience in a Class 2 or higher rated water treatment plant; and • 24 months additional water-related experience. • Relevant excess education may substitute for additional water-related experience requirement.
WTPO 4	16 years	<ul style="list-style-type: none"> • 24 months operating experience in a Class 3 or higher rated water treatment plant; and • 24 months additional water-related experience. • Relevant excess education may substitute for additional water-related experience requirement.

(2) Minimum education and operating experience requirements for WDS and WDM certification levels are in Table 6.

Table 6
WDS and WDM Minimum Education and Experience Requirements

Certification Level	Minimum Education Requirement (see Table 7 for equivalents)	Minimum Experience Requirement
WDS	12 years	6 months operating experience in a water treatment plant or distribution system.
((WDM – OIT	12 years	<p>One of the following:</p> <ul style="list-style-type: none"> • 3 months operating experience in a water treatment plant or distribution system; • 3 months water-related experience; or • 30 hours of relevant water system training (3 CEUs or 3 college credits).)
WDM 1	12 years	12 months operating experience in a water treatment plant or distribution system.
WDM 2	12 years	<ul style="list-style-type: none"> • 12 months operating experience in a water treatment plant or distribution system; and • 24 months additional water-related experience. • Relevant excess education may substitute for additional water-related experience requirement.
WDM 3	14 years	<ul style="list-style-type: none"> • 12 months operating experience in a water treatment plant or distribution system; and • 36 months additional water-related experience. • Relevant excess education may substitute for additional water-related experience requirement.
WDM 4	16 years	<ul style="list-style-type: none"> • 12 months operating experience in a water treatment plant or distribution system; and • 36 months additional water-related experience. • Relevant excess education may substitute for additional water-related experience requirement.

(3) OIT requirements. Applicants for a WTPO or WDM OIT certification must meet the following requirements:

(a) Level 1 must meet the minimum education identified in Table 5 or 6 and either:

(i) Three months operating experience in a distribution system or in a water treatment plant;

(ii) Three months water-related experience; or

(iii) Three relevant college credits or thirty hours (three CEUs) of relevant training.
(b) Levels 2 through 4 must meet the minimum education and water-related experience requirements identified in Table 5 or 6 for the applicable certification level, excluding the operating experience requirements.

(4) The minimum education and operating experience requirements for a CCS are:

(a) Twelve years of education (refer to Table 7 for equivalent education requirements); and

(b) At least six months ((operating)) water-related experience ((in a public water system's water treatment plant, distribution system, or water-related experience implementing a cross-connection control program for a consumer's water system not subject to WAC 246-290-490)).

~~((4))~~ (5) A BAT shall have at least twelve years of education (refer to Table 7 for equivalent education requirements).

**Table 7
 Minimum Education Requirements and Equivalent Education and Substitutions**

Minimum Education Requirement	Equivalent Education and Substitutions
12 years of education	<ul style="list-style-type: none"> High school diploma or GED; One year of water-related experience may substitute for each year of education through twelfth grade.
14 years of education	<ul style="list-style-type: none"> High school diploma or GED, and one of the following: <ul style="list-style-type: none"> A two-year college degree; 60 college semester credits; 90 college quarter credits; or 90 CEUs from relevant water system training. One year of operating experience or water-related experience may substitute for each year of education through twelfth grade. Two years of operating experience or water-related experience may substitute for each year of college education.
16 years of education	<ul style="list-style-type: none"> High school diploma or GED, and one of the following: <ul style="list-style-type: none"> A four-year college degree; 120 college semester credits; 180 college quarter credits; or 180 CEUs from relevant water system training. One year of operating experience or water-related experience may substitute for each year of education through twelfth grade. Two years of operating experience or water-related experience may substitute for each year of college education.

~~((5))~~ (6) Water-related experience used to substitute for the minimum education requirements must exceed the minimum experience requirements for certification in Tables 5 and 6 before the experience is used as an equivalent education substitution in Table 7.

~~((6))~~ (7) The department may approve an applicant's relevant excess education or water-related experience that meets the requirements in Tables 5, 6, and 7.

**WSR 17-23-123
 PERMANENT RULES
 BOARD OF
 PILOTAGE COMMISSIONERS**

[Filed November 17, 2017, 12:50 p.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: All requirements necessary to amend the existing Puget Sound pilotage district tariff as set forth in chapter 53.08 RCW have been met.

Purpose: To establish a 2018 annual tariff for pilotage in the Puget Sound pilotage district. The purpose of the proposal is [to] update the effective year of the tariff only. The tariff rates and language will remain as is.

Citation of Rules Affected by this Order: Amending WAC 363-116-300.

Statutory Authority for Adoption: RCW 88.16.035.

Adopted under notice filed as WSR 17-20-061 on October 2, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 1, 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: November 9, 2017.

Jaimie C. Bever
Executive Director

AMENDATORY SECTION (Amending WSR 16-23-162, filed 11/23/16, effective 1/1/17)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours January 1, (~~2017~~) 2018, through 2400 hours December 31, (~~2017~~) 2018.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
Pilot boat fee:	\$348.00
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

Compass Adjustment	\$359.00
Radio Direction Finder Calibration	\$359.00
Launching Vessels	\$540.00
Trial Trips, 6 hours or less (minimum \$1,014.00)	\$169.00 per hour
Trial Trips, over 6 hours (two pilots)	\$338.00 per hour
Shilshole Bay - Salmon Bay	\$211.00
Salmon Bay - Lake Union	\$164.00
Lake Union - Lake Washington (plus LOA zone from Webster Point)	\$211.00
Cancellation Charge	LOA Zone I
Cancellation Charge - Port Angeles:	LOA Zone II

(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)

Waterway and Bridge Charges:

Ships up to 90' beam:

A charge of \$266.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$127.00 per bridge.

Ships 90' beam and/or over:

A charge of \$361.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$251.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:

Applicable harbor shift rate to apply, plus \$274.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$274.00 for every hour or fraction thereof.

Sailing Delay:

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$274.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of \$274.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival - Port Angeles:

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of \$274.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of \$0.0084 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of \$0.0814 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be \$0.0974 per gross ton.

Notwithstanding the above tonnage charges, there shall be a minimum tonnage charge of \$500.00 applied to:

- (1) All LOA Zone I assignments other than assignments of an additional pilot(s) on ship movements involving more than one pilot jointly piloting the vessel; and
- (2) All LOA Zone II and greater assignments.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

March Point or Anacortes	\$195.00
Bangor	190.00
Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00
Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

Payment Terms and Delinquent Payment Charge:

1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:

In the event that a pilot consents to board or disembark a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

Direct Transit Charge \$2,107.00

Sailing Delay Charge. Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period. \$283.00 per hour

Slow Down Charge. Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities. \$283.00 per hour

Cancellation Charge. Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses. \$525.00

Transportation Charge Vancouver Area. Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia. \$514.00

Transportation Charge Outports. Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range. \$649.00

Training Surcharge:

On January 1, 2011, a surcharge of \$15.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

LOA Rate Schedule:

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
UP to 449	263	381	650	968	1,304	1,692
450 - 459	274	388	653	983	1,325	1,700
460 - 469	276	392	665	999	1,343	1,708
470 - 479	285	404	672	1,020	1,347	1,711
480 - 489	294	410	675	1,038	1,355	1,719
490 - 499	298	416	685	1,057	1,371	1,728
500 - 509	313	423	695	1,068	1,383	1,738
510 - 519	315	431	702	1,085	1,398	1,744
520 - 529	319	447	712	1,090	1,410	1,758
530 - 539	329	452	721	1,102	1,432	1,778
540 - 549	334	458	738	1,114	1,454	1,795
550 - 559	341	474	742	1,130	1,466	1,812
560 - 569	353	493	757	1,141	1,479	1,828
570 - 579	361	496	760	1,146	1,495	1,841
580 - 589	376	505	778	1,154	1,503	1,859
590 - 599	393	516	782	1,160	1,526	1,882
600 - 609	408	532	794	1,164	1,544	1,890
610 - 619	431	537	807	1,169	1,559	1,907
620 - 629	447	543	814	1,183	1,577	1,929
630 - 639	468	552	824	1,186	1,591	1,946
640 - 649	486	566	832	1,188	1,604	1,960
650 - 659	520	575	847	1,197	1,624	1,981

LOA	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
(Length Overall)	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
660 - 669	530	582	854	1,205	1,642	1,996
670 - 679	550	597	863	1,226	1,660	2,009
680 - 689	557	607	874	1,237	1,674	2,028
690 - 699	574	616	888	1,258	1,692	2,071
700 - 719	599	637	904	1,275	1,725	2,093
720 - 739	634	653	927	1,292	1,758	2,128
740 - 759	659	685	945	1,304	1,795	2,167
760 - 779	685	707	968	1,325	1,828	2,194
780 - 799	719	738	983	1,343	1,859	2,234
800 - 819	748	760	1,002	1,350	1,890	2,268
820 - 839	771	788	1,025	1,371	1,929	2,293
840 - 859	804	820	1,046	1,387	1,958	2,333
860 - 879	834	847	1,064	1,423	1,996	2,367
880 - 899	863	871	1,085	1,455	2,028	2,402
900 - 919	889	900	1,103	1,494	2,071	2,434
920 - 939	917	927	1,130	1,526	2,091	2,468
940 - 959	950	952	1,147	1,559	2,128	2,498
960 - 979	971	980	1,167	1,591	2,167	2,535
980 - 999	1,003	1,002	1,187	1,624	2,194	2,568
1000 - 1019	1,065	1,067	1,240	1,710	2,299	2,678
1020 - 1039	1,094	1,098	1,279	1,758	2,368	2,757
1040 - 1059	1,127	1,125	1,316	1,812	2,435	2,838
1060 - 1079	1,161	1,165	1,355	1,866	2,511	2,922
1080 - 1099	1,196	1,197	1,394	1,920	2,585	3,011
1100 - 1119	1,230	1,234	1,437	1,980	2,662	3,102
1120 - 1139	1,268	1,274	1,481	2,037	2,742	3,194
1140 - 1159	1,304	1,310	1,523	2,098	2,825	3,291
1160 - 1179	1,343	1,347	1,571	2,161	2,909	3,388
1180 - 1199	1,384	1,388	1,616	2,226	2,997	3,491
1200 - 1219	1,427	1,430	1,664	2,293	3,087	3,593
1220 - 1239	1,467	1,473	1,713	2,362	3,177	3,701
1240 - 1259	1,511	1,516	1,763	2,432	3,274	3,811
1260 - 1279	1,555	1,561	1,817	2,505	3,373	3,925
1280 - 1299	1,602	1,609	1,872	2,580	3,471	4,044
1300 - 1319	1,651	1,655	1,927	2,657	3,576	4,164
1320 - 1339	1,701	1,705	1,986	2,736	3,682	4,290
1340 - 1359	1,749	1,756	2,045	2,817	3,792	4,419
1360 - 1379	1,803	1,807	2,106	2,903	3,905	4,549
1380 - 1399	1,855	1,861	2,171	2,989	4,022	4,687
1400 - 1419	1,912	1,918	2,233	3,077	4,142	4,826

LOA	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
(Length Overall)	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
1420 - 1439	1,968	1,976	2,301	3,171	4,268	4,971
1440 - 1459	2,029	2,035	2,371	3,265	4,395	5,120
1460 - 1479	2,086	2,094	2,440	3,362	4,527	5,270
1480 - 1499	2,150	2,157	2,512	3,462	4,661	5,429
1500 - Over	2,215	2,222	2,587	3,568	4,800	5,591

WSR 17-23-138

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed November 20, 2017, 11:19 a.m., effective December 21, 2017]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The university is updating procedures regarding requests for public records in order to comply with legislative changes to the Public Records Act (chapter 42.56 RCW) pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, which are effective July 23, 2017. Washington State University (WSU) is required to properly use state resources in responding to public records requests and adoption of the fee structure furthers that purpose. RCW 42.56.120 as amended requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual costs of copies), the agency must have a rule declaring the reason that it is not calculating actual costs because to do so would be unduly burdensome. The statute as amended also allows an agency to waive any charge assessed for a public record pursuant to a rule.

Purpose: The university is updating the procedures regarding requests for public records from WSU. The changes include, but are not limited to, rules regarding costs and available media for providing copies of public records.

Citation of Rules Affected by this Order: Amending WAC 504-45-010, 504-45-020, 504-45-030, 504-45-040, 504-45-050, 504-45-060, 504-45-070, and 504-45-080.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 17-18-092 on September 6, 2017.

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 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, 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 8, Repealed 0.

Date Adopted: November 17, 2017.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-04-027, filed 1/29/07, effective 3/1/07)

WAC 504-45-010 Authority and purpose. (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures Washington State University (~~will~~) is to follow in order to provide full access to public records. Washington State University (~~shall~~) is hereinafter (~~be~~) referred to as the "university." Where appropriate, the term university also refers to the staff and employees of Washington State University. These rules provide information to persons wishing to request access to public records of the university and establish processes for both requestors and university staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules (~~will be~~) are interpreted in favor of disclosure. In carrying out its responsibilities under the act, the university (~~will be~~) is guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 13-24-028, filed 11/25/13, effective 12/26/13)

WAC 504-45-020 Agency description—Contact information—Public records officer. (1) Washington State University is an institution of higher education, authority for which is located in chapter 28B.30 RCW. The administrative offices of the university are located at the university's main campus at Pullman, Washington. ~~((Regional))~~ Other campuses are located ~~((in))~~ at Spokane, Tri-Cities, ~~((and))~~ and Vancouver, and Everett, Washington. Agricultural research centers are located at Mt. Vernon, Prosser, Puyallup, Vancouver, and Wenatchee, Washington. Cooperative extension offices are maintained ~~((in))~~ at the county seats of all counties in the state. The university also has operations offices ~~((in))~~ at Seattle and Olympia, Washington.

(2) Any person wishing to request access to public records of the university, or seeking assistance in making such a request, should contact the university's public records office located at the Pullman administrative offices. Current contact information and additional information regarding release of public records ~~((can be found))~~ are available on the ~~((university))~~ university's web site at ~~((http://www.wsu.edu))~~ https://wsu.edu.

(3) The public records officer ~~((will))~~ oversees compliance with the act, but another university staff member may process the request. Therefore, these rules ~~((will))~~ refer to the public records officer or "designee." The public records officer or designee and the university ~~((will))~~ provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the university.

AMENDATORY SECTION (Amending WSR 13-24-028, filed 11/25/13, effective 12/26/13)

WAC 504-45-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the university. For the purposes of this chapter, the normal business hours for the public records office ~~((shall be))~~ are from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding the university's holidays and scheduled and emergency closure periods. Records must be inspected at the offices of the university.

(2) Index of records. An index of final orders, declaratory orders, interpretive statements, and policy statements entered after June 30, 1990, is available at the office of the university's rules coordinator at the Pullman campus. The university ~~((will))~~ posts links to many of these records on its web site at ~~((http://www.wsu.edu))~~ https://wsu.edu.

(3) Organization of records. The university ~~((will))~~ maintains its records in a reasonably organized manner. The university ~~((will))~~ takes reasonable actions to protect records from damage and disorganization. A requestor ~~((shall))~~ must not take university records from university offices without the permission of the public records officer or designee. Certain records are available on the ~~((university))~~ university's web site at ~~((www.wsu.edu))~~ https://wsu.edu. Requestors are

encouraged to view the documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the university should make the request in writing on the university's request form, or by letter, fax, or email addressed to the public records officer or designee. The following information must be included in the request:

(i) Name of the person requesting records;

(ii) Mailing address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to RCW 42.56.120, standard photocopies ~~((will be))~~ or electronically produced copies are provided at ~~((a rate of no more than fifteen cents per page. The university may charge the current approved rate for scanned images of paper records if images are requested))~~ the rates established in WAC 504-45-070. A requestor may also refer to the ~~((university))~~ university's web site at ~~((http://www.wsu.edu))~~ https://wsu.edu for current rates.

(c) A form is available for use by requestors at the public records office and on the university's web site at ~~((http://www.wsu.edu))~~ https://wsu.edu.

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she ~~((will))~~ confirms receipt of the information and the substance of the request in writing.

AMENDATORY SECTION (Amending WSR 13-24-028, filed 11/25/13, effective 12/26/13)

WAC 504-45-040 Processing of public records requests—General. (1) Providing "fullest assistance." The university is charged by statute with adopting rules which provide for how it ~~((will))~~ is to "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with the essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee ~~((will process))~~ processes requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer or designee ~~((will do))~~ does one or more of the following:

(a) Makes the records available for inspection or copying;

(b) If copies are requested and payment for the copies, if any, is made or terms of payment are agreed upon, sends the copies to the requestor;

(c) Provides a reasonable estimate of when records will be available;

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone, email, or mail. Based upon that clarification, the public records officer or designee may revise the estimate of when records will be available; or

(e) ~~((Deny))~~ Denies the request.

(3) Consequences of failure to respond. If the university does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer or designee to determine the reason for the failure to respond.

(4) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons ~~((will))~~ includes a copy of the request.

(5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the university believes that a record is exempt from disclosure and should be withheld, the public records officer or designee ~~((will))~~ states the specific exemption and provides a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee ~~((will))~~ redacts the exempt portions, provides the non-exempt portions, and indicates to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the university ~~((shall))~~ must promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor ~~((shall))~~ must indicate which documents he or she wishes the university to copy.

(b) The requestor must claim or review the assembled records within thirty days of the university's notification to him or her that the records are available for inspection or copying. The university ~~((will notify))~~ notifies the requestor in writing of this requirement and informs the requestor that he or she should contact the university to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the university may close the request. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) Providing copies of records. After inspection is complete, the public records officer or designee ~~((shall))~~ makes any copies of records requested by the requestor or arranges for copying.

(8) Providing records in installments. When the request is for a large number of records, the public records officer or

designee ~~((will))~~ provides access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee ~~((will))~~ indicates that the university has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(10) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee ~~((will))~~ closes the request and indicates to the requestor that the university has closed the request.

(11) Later discovered documents. If, after the university has informed the requestor that it has provided all available records, the university becomes aware of additional responsible documents existing at the time of the request, it ~~((will))~~ must promptly inform the requestor of the additional documents and ~~((will))~~ make them available for inspection or provide copies upon payment on an expedited basis.

AMENDATORY SECTION (Amending WSR 13-24-028, filed 11/25/13, effective 12/26/13)

WAC 504-45-050 Processing of public records requests—Electronic records. (1) Requesting electronic records. The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records. When a requestor requests records in an electronic format, the public records officer or designee ~~((will))~~ provides the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) Customized access to databases. With the consent of the requestor, the university may provide customized access under RCW 43.41A.130 if the record is not reasonably locatable or not reasonably translatable into the format requested. The university may charge a fee consistent with RCW 43.41A.130 for such customized access. (See WAC 504-45-070.)

AMENDATORY SECTION (Amending WSR 07-04-027, filed 1/29/07, effective 3/1/07)

WAC 504-45-060 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the university for inspection and copying. This is not an exhaustive

list as numerous exemptions exist outside the act. The university's failure to list an exemption here (~~shall~~) does not affect the efficacy of any exemption.

- (a) RCW 5.60.060(~~(—)~~)—Privileged communications;
 - (b) 20 U.S.C. 1232g(~~(—)~~)—Family Education Rights and Privacy Act (FERPA);
 - (c) 42 U.S.C. 405 (c)(2)(vii)(1)(~~(—)~~)—Social Security numbers;
 - (d) 45 C.F.R. (~~(16-0164—HIPAA Privacy Rule)~~) parts 106 and 164 - Health Insurance Portability and Accountability Act of 1996 (HIPAA);
 - (e) Chapter 19.108 RCW and RCW 4.24.601(~~(—)~~)—Uniform Trade Secrets Act; and
 - (f) Chapter 10.97 RCW ((10.97—))—Regarding criminal history information.
- (2) The university is prohibited by statute from providing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 13-24-028, filed 11/25/13, effective 12/26/13)

WAC 504-45-070 Costs of providing copies of public records. (1) Costs for copies of (~~paper~~) public records. There is no fee for inspecting public records. (~~A requestor may obtain standard black and white photocopies for fifteen cents per page or scanned images at the current approved rate per image. Before beginning to make the copies or images, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The university will not charge sales tax when it makes copies of public records. The university may charge actual costs for special arrangements necessary for providing copies of records when required by the requestor, e.g., costs of color copying.~~)

(2) Costs of mailing. The university may also charge actual costs of mailing, including the cost of the shipping container.) The following fees apply to copies of public records:

- (a) Ten cents per page for records scanned into electronic format;
- (b) Five cents for every four electronic files or attachments uploaded to an email, cloud storage service, or other electronic delivery system;
- (c) Ten cents per gigabyte for transmitting records electronically;
- (d) Fifteen cents per page for photocopies of public records and/or printed copies of electronic public records when requested;
- (e) The actual cost of any digital storage media or device provided by the agency, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge;
- (f) Under RCW 42.56.120, the university may charge other copy fees authorized by statutes outside chapter 42.56 RCW.

(2) In addition to the charge imposed for providing copies of public records and for the use by any person of university equipment, the university may include a customized service charge. The university charges for customized services pursuant to RCW 42.56.120(3). The customized service charge may reimburse the university up to the actual cost of providing the services in this section. The university provides the requestor the opportunity to amend his or her request in order to avoid or reduce the cost of a customized service charge. The university may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If the university makes a request available on a partial or installment basis, the university may charge for each part of the request as it is provided.

(3) Payment. Payment may be made by cash, check, or money order to the university.

(a) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The university notifies the requestor of when payment is due.

(b) The university closes a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

(4) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, Washington State University declares that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records for the following reasons:

(a) Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential agency functions.

AMENDATORY SECTION (Amending WSR 08-08-055, filed 3/27/08, effective 4/27/08)

WAC 504-45-080 Review of denials of public records. (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of that decision. The petition (~~shall~~) must include a copy of, or reasonably identify, the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer (~~will~~) must immediately consider the petition and either affirm or reverse such denial within two business days following the university's receipt of the petition, or within such other time as the university and the requestor mutually agree (~~(to)~~).

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if the university denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office (~~(to)~~) review the matter. The

attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may (~~obtain~~) request court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

WSR 17-23-139
PERMANENT RULES
PARKS AND RECREATION
COMMISSION

[Filed November 20, 2017, 12:43 p.m., effective December 21, 2017]

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

Purpose: The Washington state parks and recreation commission adopted an emergency rule at their meeting on Thursday, July 13, 2017, declaring it unduly burdensome to calculate the cost of producing copies of public records and adopted the statutory fee schedule from EHB 1595. A proposed rule making (CR-102) was filed on Tuesday, October 3, 2017, declaring the intent to make the adopted emergency rule permanent. At the commission meeting on Thursday, November 16, 2017, the commission again declared it unduly burdensome to calculate the actual costs of producing copies of public records and adopted the statutory fee schedule from the RCW 42.56.120 Charges for copying, and directed staff to commence the process for adopting the rule below (under the permanent rule header) as permanent effective thirty-one days from the filing of this rule-making order (CR-103P).

Citation of Rules Affected by this Order: New WAC 352-40-135 Calculation of actual costs of producing copies of public records declared to be unduly burdensome—Adoption of statutory fee schedule.

Statutory Authority for Adoption: HB [EHB] 1595 and RCW 42.56.120 Charges for copying.

Other Authority: Chapter 79A.05 RCW.

Adopted under notice filed as WSR 17-20-074 on October 3, 2017.

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 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, 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 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: Friday, November 17, 2017.

Valeria Evans
Management Analyst

NEW SECTION

WAC 352-40-135 Calculation of actual costs of producing copies of public records declared to be unduly burdensome—Adoption of statutory fee schedule. (1) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the Washington state parks and recreation commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(2) The Washington state parks and recreation commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017.

WSR 17-23-170
PERMANENT RULES
GAMBLING COMMISSION

[Filed November 21, 2017, 11:35 a.m., effective December 22, 2017]

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

Purpose: This rule is a result of a licensee petition for rule making. This rule will increase the value from \$25 to \$100 for each individual raffle ticket sold in a nonprofit's members-only raffle as part of a package that includes dues, entertainment, or other fund raising activities.

Citation of Rules Affected by this Order: Amending WAC 230-11-087.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 17-19-118 on September 20, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 1, 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: November 21, 2017.

Brian J. Considine
Legal and Legislative Manager

AMENDATORY SECTION (Amending WSR 06-20-040, filed 9/26/06, effective 1/1/08)

WAC 230-11-087 Other pricing plans for members-only raffles. (1) Licensees may sell multiple tickets to enter one or more drawings as a package if the total price of the package does not exceed twenty-five dollars.

(2) Licensees may include tickets to enter a raffle as a part of a package that includes dues, entertainment, or other fund-raising activities if:

(a) The package discloses the value of each component of the package to the purchaser; and

(b) The value of each individual raffle ticket does not exceed ~~((twenty-five))~~ one hundred dollars.

**WSR 17-23-173
PERMANENT RULES
DEPARTMENT OF**

LABOR AND INDUSTRIES

[Filed November 21, 2017, 11:58 a.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: The purpose of this rule making is to adopt rules for infractions of manufactured home installations as a result of HB 1329 (chapter 10, Laws of 2017). The bill replaces the mandatory penalty of \$1,000 for each infraction of manufactured home installation requirements with discretionary authority to issue warnings, and a monetary penalty of no more than \$250 for a first infraction and no more than \$1,000 for a second or subsequent infraction. The bill became effective on July 23, 2017. The adopted rule establishes a penalty schedule for infractions for manufactured home installations as required by the bill and modifies the issuance of notices of infractions to comply with the new statutory requirements.

Citation of Rules Affected by this Order: Amending WAC 296-150I-0210 What violations of RCW 43.22A.130 can result in the issuance of a notice of infraction? and 296-150I-3000 Penalties, fees, and refunds.

Statutory Authority for Adoption: Chapter 43.22A RCW, Mobile and manufactured home installation.

Adopted under notice filed as WSR 17-17-132 on August 22, 2017.

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 the Request of a Non-governmental 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 2, Repealed 0.

Date Adopted: November 21, 2017.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 08-12-040, filed 5/30/08, effective 6/30/08)

WAC 296-150I-0210 What violations of RCW 43.22A.130 can result in the issuance of a notice of infraction? (1) Under RCW 43.22A.130, the department can issue a notice of infraction to a person, contractor, manufacturer/mobile home dealer, manufacturer, or home dealer's or manufacturer's agent for:

(a) Failure to have a certified installer on the installation site whenever installation work is being performed;

(b) Failure to correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same;

(c) Failure by a certified installer to affix a certification tag to an installed manufactured/mobile home;

(d) Transfer of certification tag(s) from a certified installer to another certified installer without prior written approval of the department;

(e) Transfer of certification tag(s) from a certified installer to a noncertified installer;

(f) Transfer of unused installer certification tags by a manufactured home retailer to a new ownership without prior written approval of the department.

(2) Each worksite and day at which a violation occurs constitutes a separate infraction.

(3) Once a violation of chapter 43.22A RCW or this chapter becomes final, any additional violations within three years become a "second," "third," or "additional" violation subject to an increased penalty as set forth in WAC 296-150I-3000.

(4) See WAC 296-150I-3000 for the specific monetary penalties associated with each of the violations discussed in this section.

AMENDATORY SECTION (Amending WSR 10-06-043, filed 2/23/10, effective 4/1/10)

WAC 296-150I-3000 Penalties, fees, and refunds.

Penalties

(1) Monetary penalties for ~~((any))~~ infractions listed in WAC 296-150I-0210 shall be assessed for each violation of chapter 43.22A RCW in the following amount ~~((of \$1,000.00))~~:

(a) Failure to have a certified installer on the installation site whenever installation work is being performed:

First Final Violation \$250.00

Each Additional Final Violation \$1,000.00

(b) Failure to correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same:

First Final Violation Warning

<u>Second Final Violation</u>	<u>\$250.00</u>
<u>Third Final Violation</u>	<u>\$500.00</u>
<u>Each Additional Final Violation</u>	<u>\$1,000.00</u>

(c) Failure by a certified installer to affix a certification tag to an installed manufactured/mobile home:

<u>First Final Violation</u>	<u>Warning</u>
<u>Second Final Violation</u>	<u>\$250.00</u>
<u>Third Final Violation</u>	<u>\$500.00</u>
<u>Each Additional Final Violation</u>	<u>\$1,000.00</u>

(d) Transfer of certification tag(s) from a certified installer to another certified installer without prior written approval of the department:

<u>First Final Violation</u>	<u>Warning</u>
<u>Each Additional Final Violation</u>	<u>\$250.00</u>

(e) Transfer of certification tag(s) from a certified installer to a noncertified installer:

<u>First Final Violation to Each Contractor in Violation</u>	<u>\$250.00</u>
<u>Each Additional Final Violation to Each Contractor in Violation</u>	<u>\$1,000.00</u>

(f) Transfer of unused installer certification tags by a manufactured home retailer to a new ownership without prior written approval of the department:

<u>First Final Violation</u>	<u>Warning</u>
<u>Each Additional Final Violation</u>	<u>\$250.00</u>

Fees and Refunds

The following fees are payable to the department in advance:

Training and certification	\$260.00
Training only 10 hours	\$130.00
Manufactured/mobile home installation inspector training	\$130.00
Refund	\$26.00
Certification renewal	\$130.00
Continuing education class	\$52.00
Retake failed examination and training	\$39.00
Manufactured home installer training manual	\$13.00
Installer certification tag	\$9.10

~~((2))~~ (2) The department shall refund fees paid for training and certification or certification renewal as a manufactured home installer if the application is denied for failure of the applicant to comply with the requirements of chapter 43.22A RCW or these rules.

~~((2))~~ (3) If an applicant has paid fees to attend training or to take an examination and is unable to attend the scheduled training or examination, the applicant may:

- (a) Change to another scheduled training and examination; or
- (b) Request a refund.

~~((3))~~ (4) An applicant who fails the examination shall not be entitled to a refund.

**WSR 17-23-176
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed November 21, 2017, 1:50 p.m., effective December 22, 2017]

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

Purpose: Amends WAC 181-79A-145, 181-79A-206, 181-79A-231, 181-79A-251, 181-79A-2510, 181-85-020 and 181-85-075, in response to legislation that was in effect immediately July 7, 2017. HB [E2SHB] 1341 removed the requirements for teacher and principal professional certification. The rule change covers licensure requirements for second tier, but voluntarily seeking second tier remains an option.

Citation of Rules Affected by this Order: Chapters 181-79A and 181-85 WAC.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 17-20-053 on September 29, 2017.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, web site www.pesb.wa.gov.

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 7, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 7, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 7, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 16, 2017.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-02-027, filed 12/28/11, effective 1/28/12)

WAC 181-79A-145 Levels and validity of certificates.
Two levels of certification may be issued.

(1) Initial and continuing certificates: Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31, 2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates: Provided, That initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing educational staff associate certificates after August 31, 2005, will be issued only to previous Washington certificate holders, pursuant to WAC 181-79A-123:

(a) Initial certificate. The initial teacher certificate is valid for four years and the initial administrator and educational staff associate certificates are valid for seven years. Initial teacher certificates shall be subject to renewal pursuant to WAC 181-79A-250(1) and 181-79A-123. Initial administrator and educational staff associate certificates shall not be subject to renewal. Initial administrator and educational staff associate certificate holders shall be issued a continuing certificate if they meet the requirements for such certificate. Initial administrator and educational staff associate certificate holders shall be issued a residency certificate if their initial certificate has expired or they do not meet the requirements for a continuing certificate.

(b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(3).

(2) Residency and professional certificates: Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) Residency certificate. The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004, and to educational staff associate school counselors and school psychologists no later than September 1, 2005.

(b) Until September 1, 2017, the first issue of a residency certificate for ((teachers,)) principals, program administrators, and educational staff associates shall be valid until the holder has completed two consecutive years of successful service in the role in Washington with a school district, state approved private school, or state agency that provides educational services for students. When the principal, program administrator, or educational staff associate completes two consecutive years of successful service in the role in the state with the same employer, their residency certificate will be reissued with a five-year expiration date; provided, that the second consecutive year of successful service in the role will be considered to be complete for purposes of reissuance if a contract for the third such year has been signed and returned to the employer. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250; provided, that residency ESA school social worker certificate holders have no residency renewal or professional certificate options and may apply for an initial ESA conversion or continuing ESA under requirements in place at time of application submission.

(c) Beginning September 1, 2017, the first issue of a residency certificate for principals, program administrators, and educational staff associates shall be valid until the holder has completed two years of successful service in the role in Washington with a school district, state approved private school, or state agency that provides educational services for students, at which time their residency certificate will be reissued with a five-year expiration date. Prior to the expiration date, the candidate must meet residency renewal requirements or earn a second-tier certificate for the role under WAC 181-79A-250. Provided, that residency ESA school social worker certificate holders have no residency renewal or professional certificate options and must apply for an initial ESA or continuing ESA certificate for the role under requirements in place at the time of application submission.

~~((e) For teachers, after September 1, 2011,)) (d) A first issue ((teacher)) residency teacher certificate remains undated until the teacher ((is eligible to register for the professional certificate assessment)) has two years of successful experience under WAC 181-79A-206, at which time the residency certificate is dated for ((three)) five years as verified by the certification office of the office of superintendent of public instruction~~((: Provided, That teachers who hold an undated initial residency certification and teach in nonpublic school settings as defined under WAC 181-79A-030 are considered to hold a valid certificate and may participate in the professional certificate requirements by submitting proof of experience under WAC 181-79A-206.~~~~

~~((d))~~. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-251.

(e) Professional certificate. The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors and school psychologists beginning September 1, 2007. The professional certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250. Provided, That a professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 (3)(b) or 181-79A-206 (3)(a) shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Provided further that a professional educational staff associate certificate for school counselors based on the possession of a valid school counselor's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) First peoples' language, culture, and oral tribal traditions certificates: The first peoples' language, culture, and oral tribal traditions certificate will be issued beginning in January 2007. The first peoples' language, culture, and oral tribal traditions certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-252.

AMENDATORY SECTION (Amending WSR 12-11-100, filed 5/21/12, effective 6/21/12)

WAC 181-79A-206 Academic and experience requirements for certification—Teachers. Candidates for teachers' certificates shall complete the following requirements in addition to those set forth in WAC 181-79A-150.

(1) Initial/residency.

Candidates for the initial or residency certificate shall hold an approved baccalaureate degree from ~~((a-regionally))~~ an accredited college or university pursuant to WAC 181-79A-030(5).

(2) Continuing.

(a) Candidates who apply for a continuing certificate shall have at least forty-five quarter hours (thirty semester hours) of upper division and/or graduate work completed from ~~((a-regionally))~~ an accredited institution of higher education subsequent to the conferral of the baccalaureate degree: Provided, That if the individual is pursuing study in a new subject matter area or specialization, lower division (freshmen or sophomore level) credit hours in that subject area or specialization shall be accepted toward continuing certification upon completion of the requirements for an endorsement in that subject area or specialization.

(b) Candidates applying for a continuing certificate prior to September 1, 2000, shall have been granted at least two subject area endorsements.

(c) Candidates who apply for a continuing certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).

(d) Candidates for continuing teachers' certificates shall provide documentation of one hundred eighty days or full-time equivalent or more satisfactory teaching experience with an authorized employer—i.e., school district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(3) Professional.

(a) Candidates for the professional certificate shall have successfully completed the external portfolio of evidence assessment ~~((as directed by RCW 28A.410.220(2)))~~ adopted by the professional educator standards board. The professional certificate requires successful demonstration of the three standards (effective teaching, professional development, and professional contributions) and twelve criteria, pursuant to WAC 181-79A-207.

(i) A candidate may submit a portfolio of evidence to the external assessment for evaluation ~~((as per RCW 28A.410.220(2)))~~ following two years of successful teaching in a state-approved public, private or state operated education program for children as defined in Title 28A RCW: Provided, the candidate was employed at least three-quarters time each year or a total of one and one-half full-time equivalent over a minimum of two years as defined in WAC 392-121-212. The portfolio assessment elements shall be determined by the professional educator standards board and include requirements for the candidates to prepare and submit a professional growth plan approved and supported by a professional growth team.

(ii) A professional growth plan identifying the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-79A-207 is prepared by the candidate for a professional certificate, in collaboration with members of the professional growth team. The candidate will identify a professional growth team as defined in WAC 181-79A-030~~((44))~~ (14).

(iii) Teacher professional certificate portfolio evidence of assessment pilot participants who have not attended a program but received a "met criteria" on all entries submitted to the pilot assessment would receive the professional certificate and not be required to attend a program.

(b) Provided, individuals who hold a teaching certificate issued by the National Board for Professional Teaching Standards (NBPTS) shall be deemed to have met the requirements of the professional certificate, in place of the requirements in (a) of this subsection.

(c) Candidates who apply for a professional certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).

(d) Candidates who have successfully completed the requirements for the professional certificate prior to the expiration of their residency certificate which would subject them to reinstatement according to WAC 181-79A-251 (1)(a)(iii) but failed to apply for the certificate may apply for the professional certificate. ~~((Individuals who are subject to reinstatement according to WAC 181-79A-251 (1)(a)(iii) who do not meet requirements for the professional certificate prior to the expiration of the residency certificate may apply for the professional certificate following not less than five years from the final residency expiration.))~~

AMENDATORY SECTION (Amending WSR 17-08-037, filed 3/29/17, effective 4/29/17)

WAC 181-79A-231 Limited certificates. Notwithstanding other requirements prescribed in this chapter for eligibility for certification in the state of Washington, the following certificates shall be issued under specific circumstances set forth below for limited service:

(1) Conditional certificate.

(a) The purpose of the conditional certificate is to assist local school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals. The professional educator standards board encourages in all cases the hiring of fully certificated individuals and understands that districts will employ individuals with conditional certificates only after careful review of all other options. The professional educator standards board asks districts when reviewing such individuals for employment to consider, in particular, previous experience the individual has had working with children.

(b) Conditional certificates are issued upon application by the local school district, approved private school, or educational service district superintendent to persons who meet the age, good moral character, and personal fitness require-

ments of WAC 181-79A-150 (1) and (2), if one of the following conditions is verified:

(i) The applicant is highly qualified and experienced in the subject matter to be taught and has unusual distinction or exceptional talent which is able to be demonstrated through public records of accomplishments and/or awards; or

(ii) No person with regular teacher certification in the endorsement area is available as verified by the district or educational service district superintendent or approved private school administrator, or circumstances warrant consideration of issuance of a conditional certificate.

(c) In addition, conditional certificates are issued to persons in the following categories only if no person with regular certification is available:

(i) The applicant qualifies to instruct in the traffic safety program as paraprofessionals pursuant to WAC 392-153-020 (2) and (3); or

(ii) The applicant is assigned instructional responsibility for intramural/interscholastic activities which are part of the district or approved private school approved program; or

(iii) The applicant possesses a state of Washington license for a registered nurse: Provided, That the district will be responsible for orienting and preparing individuals for their assignment as described in (e)(iii) of this subsection; or

(iv) The applicant has completed a bachelor's degree or higher from a regionally accredited college/university. All speech-language pathologists or audiologists providing services under a current and valid conditional certificate issued as of June 30, 2003, will be fully qualified consistent with WAC 181-79A-223 by the year 2010. First conditional certificates, issued to speech-language pathologists or audiologists after June 30, 2003, which are valid for up to two years, may be reissued once for up to two years, if the individual provides evidence that he/she is enrolled in and completing satisfactory progress in a master's degree program resulting in the initial ESA school speech-language pathologists or audiologist certificate.

(v) The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college/university.

(vi) The issuance of a conditional certificate to a special education teacher after July 1, 2003, is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education. The conditional certificate is valid for up to two years and may be reissued once for one year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program.

(vii) An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(d) The educational service district or local district superintendent or administrator of an approved private school will verify that the following criteria have been met when requesting the conditional certificate:

(i) The district or educational service district superintendent or approved private school administrator has indicated

the basis on which he/she has determined that the individual is competent for the assignment;

(ii) The individual is being certificated for a specific assignment and responsibility in a specified activity/field;

(e) When requesting the conditional certificate for persons who provide classroom instruction, the educational service district superintendent or local district superintendent or approved private school administrator will verify that the following additional criteria will be met:

(i) After specific inclusion on the agenda, the school board or educational service district board has authorized submission of the application.

(ii) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities with the direct assistance of a school district or approved private school mentor and will not be serving in a paraprofessional role which would not require certification;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment by the employing district or approved private school. A written plan of assistance will be developed, in cooperation with the person to be employed within twenty working days from the commencement of the assignment. In addition, prior to service the person will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment;

(iv) Within the first sixty working days, personnel so certificated will complete sixty clock hours (six quarter hours or four semester hours) of course work in pedagogy and child/adolescent development appropriate to the assigned grade level(s) as approved by the employing school district or approved private school.

(f) The certificate is valid for two years or less, as evidenced by the expiration date which is printed on the certificate, and only for the activity specified. The certificate may be reissued for two years and for two-year intervals thereafter upon application by the employing local school district, approved private school, or educational service district and upon completion of sixty clock hours (six quarter hours or four semester hours) of course work since the issuance of the most recent certificate. The requesting local school district, approved private school, or educational service district shall verify that the sixty clock hours taken for the reissuance of the certificate shall be designed to support the participant's professional growth and enhance the participant's instructional knowledge or skills to better assist students meeting the state learning goals and/or essential academic learning requirements.

(2) Substitute certificate.

(a) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed one hundred eighty days during the school year in any one assignment. Districts or approved private schools employing a teacher holding a substitute certificate in any one assignment for more than thirty days must within twenty days develop a plan of professional learning for the individual that is appropriate to the assignment and designed to support their professional growth and enhance instructional knowledge and skills to meet dis-

district needs and better assist students in meeting the state learning goals. This certificate may be issued to:

(i) Teachers, educational staff associates or administrators who hold or have held a regular state of Washington certificates: Provided, educational staff associates may only substitute in the role of their certificate; or

(ii) Persons who have completed state approved preparation programs and baccalaureate degrees at accredited colleges and universities for certificates; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257 (1)(c) and (d); or

(iv) Persons who hold or have held a continuing career and technical education teacher certificate.

(b) The substitute certificate is valid for life.

(3) Emergency certification.

(a) Emergency certification for the roles of principal, teacher, school counselor, school psychologist, school speech language pathologist or audiologist and school social worker may be issued upon the recommendation of school district and educational service district superintendents or approved private school administrators to persons who hold a bachelor's degree and are enrolled in a state-approved preparation program for the role, if it is a role for which state-approved programs are required, in accordance with Washington requirements for certification and shall be the best qualified of the candidates for the position as verified by the employing school district: Provided, That a qualified person who holds regular certification for the requested role is not available or that the position is essential and circumstances warrant consideration of issuance of an emergency certificate: Provided further, That an emergency certificate issued with a special education endorsement may be reissued once for one school year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program: Provided further, That a candidate for emergency certification as a principal holds a master's degree and has substantially completed the state-approved preparation program: Provided further, That a candidate for emergency certification as a school psychologist shall be enrolled in a state-approved school psychologist preparation program, shall have completed all course work for the required master's degree, and shall be participating in the required internship: Provided further, That a candidate for emergency certification as a school speech language pathologist or audiologist shall be enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification, and may be renewed one time if the candidate has substantially completed the required master's degree program.

(b) The emergency certificate is valid for one year or less, as evidenced by the expiration date which is printed on the certificate.

(4) Emergency substitute certification.

(a) If the district or approved private school has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, the superintendent of public instruction may issue emergency substitute certificates to persons not fully qualified under subsection (2) of this section for use in a particular school

district or approved private school once the list of otherwise qualified substitutes has been exhausted.

(b) Such emergency substitute certificates shall be valid for three years or less, as evidenced by the expiration date which is printed on the certificate.

(c) To ensure that related services personnel deliver special education services in their respective discipline or profession, the office of superintendent of public instruction may not issue emergency substitute certificates for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b)(2)(ii).

(5) Nonimmigrant alien exchange teacher. Applicants for certification as a nonimmigrant alien exchange teacher must qualify pursuant to WAC 181-79A-270 and be eligible to serve as a teacher in the elementary or secondary schools of the country of residence.

(6) Intern substitute teacher certificate.

(a) School districts and approved private schools may request intern substitute teacher certificates for persons enrolled in student teaching/internships to serve as substitute teachers in the absence of the classroom teacher.

(b) The supervising college or university must approve the candidate for the intern substitute teacher certificate.

(c) Such certificated substitutes may be called at the discretion of the school district or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher/intern.

(d) The intern substitute teacher certificate is valid for one year, or less, as evidenced by the expiration date which is printed on the certificate.

(7) Transitional certificate.

(a) An individual whose continuing ~~((or residency))~~ certificate has expired according to WAC 181-85-040 ~~((or 181-79A-251))~~ may be issued a transitional certificate to be employed on a conditional basis upon request by a school district, approved private school, or educational service district superintendent. The holder of the transitional certificate must successfully complete ~~((the external assessment established by the professional educator standards board))~~ requirements for continuing certificate reinstatement within two years of the date the holder was issued the transitional certificate ~~((in order to continue to be employed: Provided, one year has elapsed since the final renewal expired and the teacher registers and passes the professional certificate assessment within the two years under WAC 181-79A-251))~~. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(b) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(c) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of assistance to be sure the holder completes the necessary continuing certificate reinstatement requirements under WAC 181-85-130 within the two-year conditional employment period specified under (a) of this subsection if the holder is to continue to be employed.

(d) The transitional certificate is not renewable and may not be reissued.

~~((8) Provisional alternative administrative certificate.~~

~~(a) This certificate shall be issued to individuals admitted to the professional educator standards board alternative route to principal certification pilot program.~~

~~(b) The certificate is valid for one year from date of issue.~~

~~(c) A comprehensive assessment of the intern's performance by school officials and program faculty and a recommendation that the person be issued a residency principal certificate upon successful completion of the program.))~~

AMENDATORY SECTION (Amending WSR 16-24-029, filed 11/30/16, effective 12/31/16)

WAC 181-79A-251 Teacher residency and professional certification—Renewal and reinstatement. (1) Residency certificates shall be renewed under one of the following options:

(a) Individuals who hold, or have held, residency certificates have the following options for renewal ~~((past the first three-year certificate))~~:

~~(i) ((Individuals who have attempted and failed the professional certificate assessment are eligible for a two-year renewal;~~

~~((ii)) One hundred continuing education credit hours as defined in chapter 181-85 WAC, or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.~~

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours since the issue date of the latest five-year residency teacher renewal certificate or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers.

For educators holding multiple certificates in chapter 181-85 or 181-79A WAC, a professional growth plan for teacher, administrator or educational staff associate shall meet the requirements for all certificates held by an individual per this chapter.

Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of

thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of twenty-five continuing education credit hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency teacher renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency teacher renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410-.2212.

Continuing education for teachers at the elementary and secondary levels in science, technology, engineering, and mathematics (STEM) related subjects must include a specific focus on the integration of STEM instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours with an emphasis on the integration of STEM. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

(ii) Individuals who have attempted and failed the professional certificate assessment are eligible for a two-year renewal.

(iii) Individuals who have not been employed or employed less than full-time as a teacher during the dated, three-year residency certificate may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio or they will complete assessment for National Board for Professional Teaching Standards. Individuals not employed as a teacher may permit their certificate to lapse until such time they register for the professional certificate assessment, or the National Board Certification((;)).

((iii)) (iv) Individuals whose three- or five-year residency certificate has lapsed may receive a two-year renewal by submitting an affidavit to the certification office confirm-

ing that they will register and submit a uniform assessment portfolio for the professional certificate assessment or assessment for National Board for Professional Teaching Standards: Provided, That teachers holding certificates expiring in 2014, 2015, or 2016 who have completed the available sections for the National Board Teacher Certificate may receive an additional two-year renewal in 2016 or 2017 to complete the assessment.

(b) A residency certificate expires after the first renewal if the candidate has not registered for and submitted a portfolio assessment prior to June 30th of the expiration year, to achieve the professional certificate, Provided: When the first two-year residency teacher renewal (~~(on residency)~~) certificate(s) expires, teachers have three renewal options:

(i) Individuals who were employed but failed the professional certification assessment, may receive a second two-year renewal;

(ii) Individuals who were unemployed or employed less than full-time as a teacher during the first two-year renewal may permit their certificate to lapse. Upon contracting to return to a teacher role, individuals may apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certification assessment;

(iii) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will complete and submit their scores from the assessment for National Board for Professional Teaching Standards or register and submit the Washington uniform assessment portfolio as per this section, WAC 181-79A-251.

~~((e) Individuals who hold expired residency certificates may be reinstated by having a district request, under WAC 181-79A-231, a transitional certification not less than one year following the final residency expiration. Provided, That the teacher registers and passes the Washington uniform assessment portfolio as per this section, WAC 181-79A-206 or assessment for National Board for Professional Teaching Standards within two years of issuance of the transitional certificate.~~

~~(d) Individuals who hold a dated residency certificate prior to September 2011 that have expiration dates past September 2011 are subject to the same renewal options as described in (a)(ii) and (iii) of this subsection.)~~

(2) Teacher professional certificate.

(a) ~~(A valid)~~ Individuals who hold a professional teacher certificate (issued prior to September 1, 2014,) may ((be) have that certificate renewed for additional five-year periods by the completion of one hundred ((fifty)) continuing education credit hours as defined in chapter 181-85 WAC or by completing four professional growth plans annually during the period in which the certificate is valid as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

~~((b) Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal.~~

~~(e) Renewal of the professional certificate.~~

~~((i)) Provided, application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.~~

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to one of the three standards: Effective instruction, professional contributions or professional development.

(b) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

~~((ii))~~ (c) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of twenty-five continuing education credit hours.

~~((iii))~~ (d) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207.

~~((iv))~~ (e) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, technology, engineering, and mathematics instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education endorsements. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics. This requirement is for all professional teacher certificate holders regardless of date of issuance of the first professional certificate. This requirement is considered to be met by holders of a valid National Board

Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

~~((v))~~ (f) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Such renewal is only available one time during the validity period of the National Board Certificate and cannot be the same National Board Certificate used to obtain the professional certificate.

~~((vi) Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by this section. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.~~

~~((vii))~~ (g) For educators holding multiple certificates in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

~~((viii) The one time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.~~

~~((ix))~~ (h) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Applications for certificate renewal dated September 1, 2019, and beyond for all teachers must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system.

~~((d) An expired professional certificate issued under rules in effect prior to September 1, 2014, may be renewed for an additional five year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to one of the three standards: Effective instruction, professional contributions or professional development.~~

~~(e) Individuals not in the role of a teacher in a public school or approved private school holding a professional~~

~~teaching certificate may have their professional certificate renewed for a five year period by the completion of:~~

~~(i) Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-79A-207; or~~

~~(ii) One hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-79A-207; or~~

~~(iii) Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal)) This requirement is considered met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).~~

AMENDATORY SECTION (Amending WSR 16-07-103, filed 3/18/16, effective 4/18/16)

WAC 181-79A-2510 Principal and program administrator residency and professional certification—Renewal and reinstatement. (1) Principals/program administrators who hold or have held residency certificates may ~~((renew))~~ have their residency ~~((certificate in one of the following ways:~~

~~(a) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional educator standards board approved professional certificate program pursuant to WAC 181-78A-507 and 181-79A-145 may have the certificate renewed for one additional two year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.~~

~~(b) Individuals who hold, or have held, residency certificates who are not in the role of principal or program administrator may have their residency certificates renewed for an additional five year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of one hundred fifty continuing education credit hours, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency)) certificates renewed by completing one hundred continuing education credit hours as defined in chapter 181-85 WAC, or four annual professional growth plans as defined in WAC 181-79A-030, within the previous five years from the date of the five-year residency administrator renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.~~

(a) Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours since the issue date of the latest five-year residency administrator renewal certificate; or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-

year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.

For educators holding multiple certificates in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of twenty-five continuing education credit hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency administrator renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year residency administrator renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency administrator renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410.2212.

(b) A three-year renewal is available until June 30, 2020, for individuals who have held or hold a principal or program administrator residency certificate that expires prior to July 1, 2019.

(2) Professional certificate. Individuals who hold a professional certificate may ((be)) have that certificate renewed for additional five-year periods ((for individuals in the role as a principal, assistant principal, or program administrator in a public school or approved private school)) by completion of

one hundred continuing education credit hours as defined in chapter 181-85 WAC or four professional growth plans developed annually since the certificate was issued, in collaboration with the professional growth team as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Provided, application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

(a) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(b) Until June 30, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. Beginning July 1, 2018, individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of ((thirty)) twenty-five hours of continuing education credit hours.

(c) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks ~~((defined in WAC 181-78A-540(1)))~~.

(d) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Certificates with a renewal date of June 30, 2019, and beyond for all principals and program administrators must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system. This requirement is considered met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

(e) ~~((Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities,~~

~~in lieu of completion of four professional growth plans. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.~~

~~(f)) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.~~

~~((g) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.))~~

AMENDATORY SECTION (Amending WSR 17-11-104, filed 5/22/17, effective 6/22/17)

WAC 181-79A-2511 School counselor residency and professional certification—Renewal and reinstatement.

(1) School counselors may renew their residency certificate in one of the following ways:

(a) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the residency certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(b) An individual school counselor who completes or intends to complete a National Board of Professional Teaching Standards (NBPTS) school counselor assessment but does not earn National Board Certification may use that completed assessment, or an affidavit of intention to complete, in order to renew the residency certificate one time for two years.

(c) Individuals who hold ~~((or have held,))~~ a residency certificate ~~((who are not in the role of school counselor))~~ may have their residency certificates renewed for an additional five-year period by the completion of ~~((fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of))~~ one hundred ~~((fifty))~~ continuing education hours as defined in chapter 181-85 WAC, directly related to the current performance-based standards as defined in WAC 181-78A-270(4) since the issuance of the residency certificate, or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours directly related to the current performance-based standards as defined in WAC 181-78A-270(4) since the issue date of the latest five-year residency renewal certificate, or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal.

Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.

Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired five-year residency renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410.2212.

(d) A three-year renewal is available until June 30, 2020, for individuals who have held or hold a school counselor residency certificate that expires prior to July 1, 2019.

(e) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(2) Professional.

~~((a) For certificates issued under rules in effect prior to September 1, 2014, a valid))~~ Individuals who hold a profes-

sional certificate may ~~((be))~~ have that professional certificate renewed for additional five-year periods by:

~~((i))~~ (a) Completion of one hundred ~~((fifty))~~ continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270(4); or

~~((ii))~~ (b) Completion of four professional growth plans that are developed annually since the certificate was issued. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

~~((b) Beginning September 1, 2014, a valid professional certificate may be renewed for additional five-year periods for individuals in the role of a school counselor by completion of four professional growth plans developed annually since the certificate was issued.~~

~~(c) Renewal of the professional certificate.~~

~~(i) Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.~~

~~((ii))~~ (c) Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.

~~(d) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks ~~((defined in WAC 181-78A-540(2)).~~~~

~~((iii))~~ as published by the professional educator standards board for administrators and educational staff associates.

~~(e) Provided, That a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Such renewal is only available one time during the validity period of the National Board Certificate and cannot be the same National Board Certificate used to obtain the professional certificate.~~

~~((iv) Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by this chapter. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to~~

~~the date of the renewal application: Provided, That this section is no longer in effect after June 30, 2020.~~

~~((v))~~ (f) Provided, application for certificate renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

~~(g) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.~~

~~((vi) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.~~

~~((vii) After))~~ (h) Beginning July 1, 2015, professional certificates for school counselors, in addition to the requirements in this chapter, must attend professional educator standards board approved training in suicide prevention as per RCW 28A.410.226 for renewal of their certificate.

~~((d) Individuals not in the role of a school counselor may have their professional certificate renewed for an additional five-year period by:~~

~~(i) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or~~

~~(ii) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or~~

~~(iii) Completion of four annual professional growth plans developed since the certificate was issued.))~~

AMENDATORY SECTION (Amending WSR 15-20-059, filed 10/1/15, effective 11/1/15)

WAC 181-79A-2512 School psychologist residency and professional certification—Renewal and reinstatement. (1) School psychologists may renew their residency certificate in one of the following ways:

(a) An individual school psychologist who is applying for the National Certificate for School Psychologist (NCSP) may apply for a one-time two-year renewal with verification of NCSP submission: Provided, That individuals with expiring certificates in 2014, 2015, 2016, or 2017 may apply for a second two-year renewal with verification of NCSP submission.

(b) An individual who holds ~~(, or has held,)~~ a residency certificate ~~((who is not in the role of school psychologist))~~ may have their residency certificate renewed for an additional five-year period by the completion of ~~((fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of))~~ one hundred ~~((fifty))~~ continuing education hours ~~((;))~~ as defined in chapter 181-85 WAC directly related to the current performance-based standards as defined in WAC 181-78A-270(5) from ~~((a regionally))~~ an accredited institution of higher education ~~((taken since the issuance of the residency certificate))~~ or four annual professional growth plans as defined in WAC 181-79A-030, completed within the previous five years from the date of the five-year renewal application. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

Subsequent five-year renewals shall be issued based on completion of one hundred continuing education credit hours directly related to the current performance-based standards as defined in WAC 181-78A-270(5) since the issue date of the latest five-year residency renewal certificate, or four professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal.

Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-79A-207 for teachers, and as published by the professional educator standards board for administrators and educational staff associates.

Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.

Provided, application for subsequent renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal. Expired five-year residency renewal certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

Candidates who apply for the five-year residency renewal certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6) and required per RCW 28A.410.-2212.

(c) School psychologists with residency certificates dated to expire June 30, 2013, 2014, 2015, 2016, or 2017, may apply until June 30, 2016, for a two-year extension. These individuals may apply for a second two-year extension until June 30, ~~((2018))~~ 2020.

(d) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(2) Professional. ~~((a) For certificates issued under rules in effect prior to September 1, 2014, a valid))~~ Individuals who hold a professional certificate may ~~((be))~~ have that certificate renewed for additional five-year periods by:

~~((i))~~ (a) Completion of one hundred ~~((fifty))~~ continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or

~~((ii))~~ (b) Completion of four professional growth plans that are developed annually since the certificate was issued. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

~~((b) Beginning September 1, 2014, a valid professional certificate may be renewed for additional five-year periods for individuals in the role of a school psychologist by completion of four professional growth plans developed annually since the certificate was issued.~~

~~(e) Renewal of the professional certificate.~~

~~(i) Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.~~

~~((ii))~~ (c) Until June 30, 2018, individuals who complete an annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of twenty-five continuing credit clock hours.

(d) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks ~~((defined in WAC 181-78A-540(2)))~~ as published by the professional educator standards board for administrators and educational staff associates.

~~((iii))~~ (e) Provided, That a school psychologist professional certificate may be renewed based on the possession of a valid nationally certified school psychologist certificate issued by the National Association of School Psychologists at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the nationally certified school psychologist certificate, whichever is greater. Such renewal is only available one time during the validity period of the nationally certified school psychologist (NCSP) certificate and cannot be the same nationally certified school psychologist certificate used to obtain the professional certificate.

(f) Provided, application for certificate renewals shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the five-year renewal application or by completing four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credits needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour or professional growth plan requirement within the five years prior to the date of the renewal application.

~~((iv))~~ Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.

~~((v))~~ (g) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

~~((vi))~~ The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

~~((vii))~~ After (h) Beginning July 1, 2015, professional certificates for school psychologists, in addition to the requirements in this chapter, must attend professional educator standards board approved training in suicide prevention as per RCW 28A.410.226 for renewal of their certificate.

~~((d))~~ Individuals not in the role of a school psychologist may have their professional certificate renewed for an additional five-year period by:

~~(i)~~ Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

~~(ii)~~ Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or

~~(iii)~~ Completion of four annual professional growth plans developed since the certificate was issued.)

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-85-020 Effective date and applicable certificates. The provisions of this chapter shall apply to the following certificates issued on or after August 31, 1987:

(1) ~~((Continuing))~~ Residency certificates as provided in chapter 181-79A WAC.

(2) Continuing certificates as provided in chapter 181-79A WAC.

(3) Standard certificates as provided under previous standards of the professional educator standards board.

~~((3))~~ (4) Professional certificates as provided in chapter 181-79A WAC.

~~((4))~~ (5) Provided, That applicants who have completed all requirements for a continuing or standard certificates prior to August 31, 1987, and who apply for such certificate prior to July 1, 1988, and applicants who have completed all requirements for a continuing or standard certificate except one of the three-years experience requirement prior to August 31, 1987, and who completes such requirement and applies prior to August 31, 1988, shall be exempt from the continuing education requirements of this chapter.

AMENDATORY SECTION (Amending WSR 16-23-036, filed 11/8/16, effective 12/9/16)

WAC 181-85-075 Continuing education requirement. Continuing education requirements are as follows:

(1) Each holder of a continuing certificate affected by this chapter shall be required to complete during a five-year period one hundred ~~((fifty))~~ continuing education credit hours, as defined in WAC 181-85-025 and 181-85-030, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates as calculated in WAC 181-85-100.

(2) Individuals holding a valid continuing certificate in subsection (1) of this section may choose to renew the certificate via annual professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional

growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred (~~fifty~~) hours to meet the requirements of subsection (1) of this section. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207 for teachers, (~~WAC 181-78A-540(1)~~) and as published by the professional educator standards board for administrators(~~, or WAC 181-78A-540(2) for~~) and educational staff associates. For educators holding multiple certificates in chapter 181-85 WAC or WAC 181-79A-251, a professional growth plan for teacher, administrator, or educational staff associate shall meet the requirement for all certificates held by an individual which is affected by this section. Until June 30, 2018, each completed annual professional growth plan shall receive the equivalent of thirty continuing education credit hours. Beginning July 1, 2018, each completed annual professional growth plan shall receive the equivalent of (~~thirty~~) twenty-five continuing education credit hours.

Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(3) Provided, That each holder of a continuing or a standard certificate affected by this chapter may present a copy of a valid certificate issued by the National Board for Professional Teaching Standards in lieu of the completion of the continuing education credit hours required by this chapter.

(4) Each holder of a continuing school psychologist certificate affected by this chapter may present a copy of a valid National Certified School Psychologist certificate issued by the National Association of School Psychologists in lieu of the completion of the continuing education credit hours required by this chapter.

(5) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and/or engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics; secondary science; the designated sciences; and career and technical education. Applications for certificate renewal dated September 1, 2019, and beyond must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan with an emphasis on the integration of science, technology, engineering, and mathematics. This requirement is considered to be met by holders of a valid National Board Certificate issued by the National Board for Professional Teaching Standards (NBPTS).

(6) Provided, as per RCW 28A.410.278(2) beginning September 1, 2016, in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. Applications for certificate renewal dated September 1, 2019, and beyond for all teachers, principals, program administra-

tors, and superintendents with continuing certificates must document completion of at least fifteen clock hours, or at least one goal from an annual professional growth plan, related to knowledge and competency of the teacher and principal evaluation criteria or system. This requirement is considered to be met by holders of a valid National Board Certificate issued by the NBPTS.

WSR 17-23-180

PERMANENT RULES

COLUMBIA BASIN COLLEGE

[Filed November 21, 2017, 3:52 p.m., effective December 22, 2017]

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

Purpose: Amending chapter 132S-10 WAC, Public records, to clarify procedures regarding the disclosure of electronic records; new definitions, fees, request procedure, clarification when the request is unclear, and current statute citations pursuant to HB [ESHB] 1594 and [EHB] 1595 passed during the 2017 legislation [legislature].

Statutory Authority for Adoption: RCW 25B.50.140 [28B.50.140].

Other Authority: HB [ESHB] 1594 and [EHB] 1595 and chapter 42.56 RCW.

Adopted under notice filed as WSR 17-19-043 on September 12, 2017.

Changes Other than Editing from Proposed to Adopted Version: Chapter 132S-10 WAC establishes procedures the college follows to provide full access to public records and to implement the provisions of the Public Records Act (chapter 42.56 RCW). The rule establishes procedures for both persons requesting access to public records and also for college staff. The proposed amendment clarifies procedures regarding disclosure of electronic records. Updates to the rule are necessary to keep procedures current and reflect recent legislative changes.

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 7, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: November 21, 2017.

Camilla Glatt
Vice President for Human
Resources and Legal Affairs

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-10-030 Authority and purpose. (1) RCW 42.56.070(1) requires Columbia Basin College (college or agency) to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. (~~RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.~~)

(2) The purpose of these rules is to establish the procedures Columbia Basin College will follow in order to provide access to public records. These rules provide information to persons wishing to request access to public records of the college and establish processes for both requestors and college staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. In carrying out its responsibilities under the act, the college will be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-10-040 Definitions. (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. This definition does not include records that are not otherwise required to be retained by the college and are held by volunteers who:

- (a) Do not serve in an administrative capacity;
- (b) Have not been appointed by the college to a college board, commission, or internship; and
- (c) Do not have a supervisory role or delegated college authority.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion pictures, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

(3) Relating to the conduct of government((-)) means to be a public record, a document must relate to the conduct of government or the performance of any governmental or proprietary function. Almost all records held by an agency relate to the conduct of government; however, some do not. A

purely personal record having absolutely no relation to the conduct of government is not a public record. Even though a purely personal record might not be a public record, a record of its existence might be. For example, a record showing the existence of a purely personal email sent by an agency employee on an agency computer would probably be a public record, even if the contents of the email itself were not.

(4) Prepared, owned, used, or retained((-)) means a public record is a record prepared, owned, used, or retained by an agency. A record can be used by an agency even if the agency does not actually possess the record. If an agency uses a record in its decision-making process, it is a public record. For example, if an agency considered technical specifications of a public works project and returned the specifications to the contractor in another state, the specifications would be a public record because the agency used the document in its decision-making process. The agency could be required to obtain the public record, unless doing so would be impossible. An agency cannot send its only copy of a record to a third party for the sole purpose of avoiding disclosure.

(5) Identifiable record(s) means the public record request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by the college is not a valid request for identifiable records, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of the college's records.

(6) "Bot" request means a request for public records that the college reasonably believes was automatically generated by a computer program or script.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-10-050 Availability of public records. (1) Hours for inspection of records. Once a request is processed, public records of Columbia Basin College are available for inspection (~~and copying~~) or receipt of copies during normal business hours of the college, Monday through Thursday 7:00 a.m. to 4:30 p.m. and Friday 7:00 a.m. to 12:00 p.m., excluding legal holidays. Records must be inspected at the offices of the college's human resources office.

(2) **Records index.** An index of public records is available for use by members of the public. There may be exemptions that may prohibit the college from releasing certain documents. The index may be accessed online at www.columbiabasin.edu.

(3) **Organization of records.** Columbia Basin College will maintain its records in a reasonably organized manner. The college will take reasonable actions to protect records from damage and disorganization. A requestor shall not take the college's records from Columbia Basin College offices without the permission of the public records officer or designee. A variety of records (~~is~~) are available on the Columbia Basin College web site at www.columbiabasin.edu. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) The college shall not impose copying charges for access to or downloading of records that the college routinely posts on its public internet web site prior to receipt of a

request unless the requestor has specifically requested that the college provide copies of records through other means.

(5) Making a request for public records.

(a) Any person wishing to inspect or ~~((copy))~~ receive copies of public records of the college should make the request in person during the college's normal office hours, or in writing on the college's request form, or by letter, fax, or email addressed to the public records officer ~~((and including))~~. While no official format is required for making a records request, the college recommends that the requestor submit requests using the college provided request form. The request form is available at the office of the public records officer and online at www.columbiabasin.edu. Regardless of format, the request must include the following information:

- (i) Name of requestor;
- (ii) Address of requestor;
- (iii) Other contact information, including telephone number and any email address;
- (iv) Identification of the public records ~~((adequate for the public records officer or designee to locate the records))~~ must be for identifiable records; and

(v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, ~~((he or she))~~ the requestor should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 132S-10-080 ~~((standard photocopies will be provided at fifteen cents per page.~~

~~((e))~~ A form is available for use by requestors at the office of the public records officer and online at www.columbiabasin.edu) the fee schedule lists the charges the college may charge for providing copies.

~~((d))~~ (c) The public records officer or designee may accept requests for public records that contain the information in this subsection (4) by telephone or in person. If the public records officer or designee accepts such a request, ~~((he or she))~~ they will confirm receipt of the information and the substance of the request in writing.

~~((e))~~ Commercial purpose: ~~((d))~~ (d) The act does not allow an agency to provide access to "lists of individuals requested for commercial purposes." RCW 42.56.070(9). The request form includes an inquiry of the requestor whether the request is for commercial purposes. Columbia Basin College may also require a requestor to sign a declaration ~~((that he or she will not put a list of individuals in the record to))~~ attesting that the request is not for use for ~~((a))~~ commercial purposes.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-10-070 Requests for public records. Both requestors and agencies have responsibilities under the act. The public records process can function properly only when both parties perform their respective responsibilities. An agency has a duty to promptly provide access to all nonexempt public records. A requestor has a duty to request identifiable records, inspect the assembled records or pay for the copies, and be respectful to agency staff.

(1) Providing "fullest assistance." Columbia Basin College is charged by statute with adopting rules which provide

for how it will provide full access to public records, protect records from damage or disorganization, prevent excessive interference with other essential functions of the agency, provide fullest assistance to requestors, and provide the most timely possible action on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or

~~((d))~~ (d) Request clarification from the requestor by telephone or in writing if the request is unclear or does not sufficiently identify the requested records ~~((request clarification from the requestor. Such clarification may be requested and provided by telephone or in writing))~~. To the greatest extent possible, the request for clarification will provide a reasonable estimate of the time required to respond to the request if it is not clarified. If the requestor fails to clarify the request, and the entire request is unclear, the public records officer need not respond to it. Otherwise, the public records officer must respond to those portions of the request that are clear. Once clarification is received, the public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) Protecting rights of others. In the event the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the college believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(5) Inspection of records.

(a) Consistent with other demands, the college shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the ~~((agency))~~ college to copy.

(b) The requestor must claim or review the assembled records within thirty days of the college's notification (~~to him or her~~) that the records are available for inspection or copying. The college will notify the requestor in writing of this requirement and inform the requestor (~~that he or she should~~) to contact the college to make arrangements to claim or (~~review~~) inspect the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the college may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying by college staff.

(7) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if (~~he or she~~) the public records officer reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that Columbia Basin College has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill (~~his or her~~) the obligation(~~s~~) to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the college has closed the request.

(10) Later discovered documents. If, after the college has informed the requestor that it has provided all available records, the college becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-10-080 (~~Costs of~~) Fee schedule for providing copies of public records. (~~(1) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page and color copies for the actual cost per page.~~)

~~Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.~~

~~Columbia Basin College will not charge sales tax when it makes copies of public records.~~

~~(2) Costs for electronic records. The cost of electronic copies of records shall be the actual costs for information on a CD-ROM. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee.~~

~~(3) Costs of mailing. The college may also charge actual costs of mailing, including the cost of the shipping container.~~

~~(4)) (1) The fee schedule for providing copies under which the college may charge:~~

PRA Fee Schedule

<u>Actual cost</u>	<u>Customized service charge (in addition to fees for copies - See copying fees below.</u>
<u>Copies:</u>	
<u>Fifteen (15) cents/page</u>	<u>Photocopies, printed copies of electronic records when requested by the requestor, or for the use of college equipment to make photocopies.</u>
<u>Ten (10) cents/page</u>	<u>Scanned records, or use of college equipment for scanning.</u>
<u>Five (5) cents/each for electronic files or attachment</u>	<u>Records uploaded to email, or cloud-based data storage service, or other means of electronic delivery.</u>
<u>Ten (10) cents/giga-byte</u>	<u>Records transmitted in electronic format or for use of college equipment to send records electronically.</u>
<u>Actual cost</u>	<u>Digital storage media or devices.</u>
<u>Actual cost</u>	<u>Any container or envelope used to mail copies.</u>
<u>Actual cost</u>	<u>Postage or delivery charges.</u>
<u>Copy charges above may be combined to the extent more than one type of charge applies to copies responsive to a particular request.</u>	
<u>Option for copies:</u>	
<u>Up to a two-dollar (\$2.00) flat fee</u>	<u>As an alternative to the copy charges, the college may charge a flat fee of up to two dollars for any request when the college reasonably estimates and documents the costs are equal to or more than two dollars. If applied to the initial installment, additional flat fees shall not be charged for subsequent installments.</u>

(2) Customized service charge. In addition to the charge imposed for providing copies of public records and for equipment copying costs, the college may include a customized service charge. A customized service charge may only be imposed if the college estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the college for other college purposes. This charge may reimburse the college up to the actual cost of providing the services. The college will notify the requestor of the charge, explanation of why the charge applies, a description of the specific expertise and a reasonable estimate for the charge before the request is filled. The college will also provide the requestor the opportunity to amend the request in order to avoid or reduce the cost.

(3) Payment. Payment may be made by cash, check, or money order to ((the)) Columbia Basin College, 2600 North 20th Avenue, Pasco, WA 99301.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-10-090 Exemptions. ~~((1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware of the following exemptions provided by law, outside the Public Records Act, that restrict the availability of some documents held by Columbia Basin College for inspection and copying:~~

- ~~(a) Educational records;~~
- ~~(b) Privacy;~~
- ~~(c) Commercial use;~~
- ~~(d) Attorney-client privilege;~~
- ~~(e) Deliberative process;~~
- ~~(f) Personal information;~~
- ~~(g) Investigative;~~
- ~~(h) Employment;~~
- ~~(i) Financial, commercial, and proprietary information.~~

~~(2) Columbia Basin College is prohibited by statute from disclosing lists of individuals for commercial purposes.)~~ **(1) Public Records Act exemptions.** There are a number of types of records exempt from public inspection and copying. The college reserves the right to determine that a public record requested in accordance with WAC 132S-10-070, or any portion thereof, is exempt under the Public Records Act.

(2) Other exemptions. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the college for inspection and copying. This is not an exhaustive list as numerous exemptions exist outside of the act to an academic setting. The college's failure to list an exemption here shall not affect the efficacy of any exemption.

- (a) RCW 5.60.060 - Privileged communications;
- (b) 20 U.S.C. 1232g - Family Educational Rights and Privacy Act (FERPA);
- (c) 42 U.S.C. 405 (c)(2)(vii)(1) - Social Security numbers
- (d) 45 C.F.R. 16-0164 - HIPPA privacy rule;
- (e) Chapter 19.108 RCW and RCW 4.24.601 - Uniform Trades Secret Act; and
- (f) Chapter 10.97 RCW - Regarding criminal history information.

(3) Identification of exemptions. A denial of any record, in whole or part, shall include a statement of the specific exemption(s) authorizing the withholding of the record (or portion thereof) and a brief explanation of how the exemption applies to the record of information withheld.

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-10-100 Review of denials of public records. (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of that decision. The petition shall include a copy of or reason-

ably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the president of Columbia Basin College or ~~((his or her))~~ designee to conduct the review. The president or ~~((his or her))~~ designee will immediately consider the petition and either affirm or reverse the denial within two business days following the college's receipt of the petition, or within such other time as the college and the requestor mutually agree to.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if Columbia Basin College denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal. If the judicial review relates to whether the college provided a reasonable estimate of time or estimate of charges to produce copies, the Franklin county superior court may require the college to show that the estimate it provided was reasonable.

WSR 17-23-182
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed November 21, 2017, 4:46 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: Amending chapter 51-50 WAC, the Washington state adoption of the 2015 International Building Code, to implement HB 1262, chapter 132, Laws of 2017, codified as RCW 19.27.550, requiring a minimum width of ninety-six inches for accessible van parking access aisles, and that the aisle be marked with no parking signs.

Citation of Rules Affected by this Order: Amending WAC 51-51-1101.

Statutory Authority for Adoption: RCW 19.27.074.

Other Authority: RCW 19.27.550.

Adopted under notice filed as WSR 17-17-112 on August 21, 2017.

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; and Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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: November 17, 2017.

Steve K. Simpson
Council Chair

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1101 Section 1101—General.

1101.2 Design. Buildings and facilities shall be designed and constructed to be accessible in accordance with this code and ICC A117.1, except those portions of ICC A117.1 amended by this section.

1101.2.1 (ICC A117.1 Section 403.5) Clear width of accessible route. Clear width of an accessible route shall comply with ICC A117.1 Section 403.5. For exterior routes of travel, the minimum clear width shall be 44 inches (1118 mm).

1101.2.2 (ICC A117.1 Section 404.2.8) Door-opening force. Fire doors shall have the minimum opening force allowable by the appropriate administrative authority. The force for pushing or pulling open doors other than fire doors shall be as follows:

1. Interior hinged door: 5.0 pounds (22.2 N) maximum
2. Interior sliding or folding doors: 5.0 pounds (22.2 N) maximum

3. Exterior hinged, sliding or folding door: 10 pounds (44.4 N) maximum.

EXCEPTION: Interior or exterior automatic doors complying with Section 404.3 of ICC ANSI A117.1.

These forces do not apply to the force required to retract latch bolts or disengage other devices that hold the door in a closed position.

1101.2.3 (ICC A117.1 Section 407.4.6.2.2) Arrangement of elevator car buttons. Buttons shall be arranged with numbers in ascending order. When two or more columns of buttons are provided they shall read from left to right.

1101.2.4 (ICC ANSI A117.1 606.7) Operable parts. Operable parts on drying equipment, towel or cleansing product dispensers, and disposal fixtures shall comply with Table 603.6.

1101.2.5 (ICC A117.1 Section 604.6) Flush controls. Flush controls shall be hand operated or automatic. Hand operated flush controls shall comply with Section 309, except the maximum height above the floor shall be 44 inches. Flush controls shall be located on the open side of the water closet.

EXCEPTION: In ambulatory accessible compartments complying with Section 604.10, flush controls shall be permitted to be located on either side of the water closet.

1101.2.6 (ICC A117.1 Section 703.6.3.1) International Symbol of Accessibility. Where the International Symbol of Accessibility is required, it shall be proportioned complying with ICC A117.1 Figure 703.6.3.1. All interior and exterior signs depicting the International Symbol of Accessibility shall be white on a blue background.

1101.2.7 (ICC A117.1 Section 502.2) Vehicle space size. Car and van parking spaces shall be 96 inches (2440 mm) minimum in width.

1101.2.8 (ICC A117.1 Section 502.4.2) Access aisle width. Access aisles serving car parking spaces shall be 60 inches (1525 mm) minimum in width. Access aisles serving van parking spaces shall be 96 inches (2440 mm) minimum in width.

1101.2.9 (ICC A117.1 Section 502.7) Identification. Accessible parking spaces shall be indicated by a vertical sign. The signs shall include the International Symbol of Accessibility complying with section 703.6.3.1. Such symbol shall be white on a blue background. Signs identifying van parking spaces shall contain the designation "van accessible." The sign may include additional language such as, but not limited to, an indication of the amount of the monetary penalty defined in RCW 46.19.050 for parking in the space without a valid permit. A vertical "no parking" sign shall be erected at the head of each access aisle located adjacent to an accessible parking space. The sign may include additional language such as, but not limited to, an indication of any penalty for parking in an access aisle. Such signs shall be 60 inches (1525 mm) minimum above the floor of the parking space, measured to the bottom of the sign.

WSR 17-23-183

**PERMANENT RULES
BEEF COMMISSION**

[Filed November 22, 2017, 7:13 a.m., effective December 23, 2017]

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

Purpose: These rules establish procedures the Washington beef commission will follow to provide full access to public records and to implement the provisions of the Public Records Act (chapter 42.56 RCW). The rules establish procedures for the commission to follow in response to requests for public records, including the schedule used by the commission for recovering the costs of producing public records.

Citation of Rules Affected by this Order: New WAC 60-12-040, 60-12-050, 60-12-060, 60-12-070, 60-12-080, 60-12-090, and 60-12-100.

Statutory Authority for Adoption: Chapter 42.56 RCW and RCW 16.67.090.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-19-108 on September 20, 2017.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 7, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, 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: November 22, 2017.

Patti Brumbach
Executive Director

NEW SECTION

WAC 60-12-040 Public records officer. The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its executive director may appoint a temporary public records officer to serve during the absence of the designated records officer. The public records officer shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff regarding disclosure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

NEW SECTION

WAC 60-12-050 Requests for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail at Washington State Beef Commission, 14240 Interurban Avenue, S. #224, Seattle, WA 98168 or by email at wsbc@wabeeff.org. The written request should include:

- (a) The name of the person requesting the record and the person's contact information;
 - (b) The calendar date on which the request is made;
 - (c) Sufficient information to readily identify the records being requested.
- (2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:
- (a) Public records made available for inspection may not be removed from the area the commission makes available for inspection;
 - (b) Inspection of any public record will be conducted in the presence of the public records officer or designee;
 - (c) Public records may not be marked or altered in any manner during inspection; and
 - (d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission office and the availability of authorized staff to operate that equipment.

NEW SECTION

WAC 60-12-060 Response to public records requests.

(1) The public records officer shall respond to public records requests within five business days by:

- (a) Providing the record;
- (b) Providing a link or address for a record available on the internet under RCW 42.56.520;
- (c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request; or
- (d) Denying the public record request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing the withholding of the record (or any part) and a brief explanation of how the exemption applies to the record(s) withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

- (a) Clarify the intent of the request;
- (b) Locate and assemble the information requested;
- (c) Notify third persons or agencies affected by the request; or
- (d) Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public record request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

NEW SECTION

WAC 60-12-070 Fees—Inspection and copying. (1)

No fee shall be charged for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington state beef commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(4) The commission or its designee may waive any of the foregoing copying costs.

NEW SECTION

WAC 60-12-080 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 16.67 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 16.67 RCW, with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(8)).

(4) Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the department and the office of the attorney general privileged under RCW 5.60.060(2).

NEW SECTION

WAC 60-12-090 Review of denials of public records requests. (1) Any person who objects to the denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision within ten business days following receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

NEW SECTION

WAC 60-12-100 Records index. The commission shall establish a records index, which shall be made available for public review.

WSR 17-23-184**PERMANENT RULES****DEPARTMENT OF LICENSING**

[Filed November 22, 2017, 8:54 a.m., effective December 23, 2017]

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

Purpose: SB 5382 (chapter 122, Laws of 2017) authorizes the department to issue identicards at a reduced cost to applicants who are under the age of eighteen and without a permanent residence address. The amendment defines "homeless" for the purposes of issuing a reduced cost identicard to homeless youth.

Citation of Rules Affected by this Order: Amending WAC 308-104-014 Application for driver's license or identicard.

Statutory Authority for Adoption: RCW 46.20.117.

Adopted under notice filed as WSR 17-20-082 on October 3, 2017.

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 the Request of a Non-governmental 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: November 22, 2017.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-067, filed 6/30/11, effective 7/31/11)

WAC 308-104-014 Application for driver's license or identicard. A person applying for a driver's license, instruction permit, or identification card must provide the following information:

(1)(a) The person's full name, current mailing and Washington residential address, and telephone number;

(b) A person applying for an identicard who does not have a permanent primary resident address may be issued an identicard at the cost of production if the person:

(i) Is under the age of eighteen;

(ii) Applies in person;

(iii) Attests to a lack of permanent primary resident address at each application; and

(iv) Provides a temporary mailing address where the identicard can be mailed.

(2) The person's physical description, including sex, height, weight, and eye color;

(3) The person's date and place of birth;

(4)(a) The person's Social Security number, if the Social Security number is required by state or federal law. If the person's Social Security number is not required by state or federal law, the person may voluntarily provide his or her Social Security number in order to assist the department in verifying identity;

(b) If the Social Security number is required by state or federal law and the person has not been issued a Social Security number, the person must submit a sworn affidavit, under penalty of perjury, stating that he or she does not have a Social Security number. The department may require that a person who is applying for a license and who has signed an affidavit under this subsection provide additional documentation satisfactory to the department establishing the person's Washington residence address;

(5) The person's mother's maiden name and whether the person is one of multiple siblings born at the same time;

(6) If the application is for a driver's license or instruction permit, whether the person has been previously licensed, where such license was issued, and under what name;

(7) If the application is for a driver's license or instruction permit, whether the person has ever had his or her driver's license or driving privilege suspended, revoked, ~~((canceled))~~ canceled, disqualified, withheld, or denied, and if so, where and when such driving sanction was imposed and the reason for such action;

(8) If the application is for a driver's license or instruction permit, whether the person has had a mental or physical condition or is taking any medication which could impair his or her ability to operate a motor vehicle;

(9) If the application is for a driver's license and the person is under the age of eighteen, a declaration by the person's parent, guardian, or employer that he or she has read and understands the intermediate license restrictions, and a declaration by the person that he or she has read and understands the intermediate license restrictions;

(10) The person's signature and, if the application is for a driver's license or instruction permit and the person is under the age of eighteen, the signature of the person's custodial parent or legal guardian; and

(11) Any supplementary documentation as may be necessary to verify any of the information required by this section.

WSR 17-23-192

PERMANENT RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Filed November 22, 2017, 10:30 a.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: The proposed rule amends sections of WAC 284-03-035 to be consistent with the statutory amendments in EHB 1595, particularly those provisions concerning charging fees for copies of public records.

Citation of Rules Affected by this Order: Amending WAC 284-03-035.

Statutory Authority for Adoption: RCW 48.02.060, 42.56.070.

Adopted under notice filed as WSR 17-20-022 on September 26, 2017.

A final cost-benefit analysis is available by contacting Stacy Middleton, P.O. Box 40258, Olympia, WA 98504, phone 360-725-9651, fax 360-586-3109, TTY 360-584-0241, email rulescoordinator@oic.wa.gov, stacy@oic.wa.gov.

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 the Request of a Non-governmental 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: November 22, 2017.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 12-03-087, filed 1/15/12, effective 2/15/12)

WAC 284-03-035 Agency rules for copy charges. (1) No fees for costs of inspection. There is no fee for inspecting public records held by the OIC.

(2) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the office of the insurance commissioner declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) **Standard ~~((photocopy))~~ charges for paper photocopies or electronically produced copies.** Unless otherwise requested, the OIC provides electronic copies of responsive documents in a portable document format (pdf). A requestor may obtain standard 8.5 x 11, black and white photocopies of responsive documents. ~~((The OIC will not charge a requestor for electronic copies, or for paper copies of fewer than one hundred pages. For copy requests of one hundred pages or more, the OIC will charge three dollars and fifty cents for the first one hundred and seventeen cents for each additional page. A statement of the factors and the manner used to determine this charge is available from the public records manager.~~

~~(3) **Use of outside vendor.** The OIC may use an outside vendor for nonstandard copies or for voluminous requests if an outside vendor can make copies more quickly and less expensively than the OIC. In the event an outside vendor is used, the requestor may be charged the actual costs billed by the vendor.~~

~~(4) **Costs of mailing.** The OIC may also charge the requestor for the actual costs of mailing, including the cost of the shipping container.) Charges for electronic and paper copies shall be in accordance with the charges specified in RCW 42.56.120 (2)(b) and (c).~~

(4) **Waiver of charges.** The OIC will not charge a requestor for paper copies of fewer than three hundred pages or for electronic copies. This waiver does not apply to customized services charges as permitted by RCW 42.56.120(3) or charges for use of an outside vendor as provided in subsection (5) of this section.

(5) **Use of outside vendor.** With the consent of the requestor, the OIC may use an outside vendor for nonstandard copies or for voluminous requests if an outside vendor can make copies more quickly and/or less expensively than the charges specified in RCW 42.56.120. The OIC may also use an outside vendor if the OIC does not have the equipment to copy the requested records due to the format in which the records are saved (for example, if the records are saved on microfilm). In the event an outside vendor is used, the requestor may be charged the actual costs billed by the vendor.

WSR 17-23-199

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed November 22, 2017, 11:57 a.m., effective December 23, 2017]

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

Purpose: The agency is amending these rules to comply with the federal rule changes adopted by the Centers for Medicare and Medicaid Services (CMS), which revised 42 C.F.R. Parts 431, 433, 438, 440, 457, and 495. These changes modernize the medicaid managed care regulations to reflect changes in the use of managed care delivery system and are primarily related to the grievance and appeals process rules.

Citation of Rules Affected by this Order: Amending WAC 182-538-040, 182-538-050, 182-538-110, 182-538-140, 182-538A-110, and 182-538B-110.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: 42 C.F.R. Parts 431, 433, 438, 440, 457, and 495.

Adopted under notice filed as WSR 17-19-106 on September 20, 2017.

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 the Request of a Non-governmental 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 6, 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 6, Repealed 0.

Date Adopted: November 22, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-24-098, filed 12/1/15, effective 1/1/16)

WAC 182-538-040 Introduction. This chapter governs services provided under the Washington apple health managed care contracts. ~~((Washington apple health managed care services are available through either a managed care organization (MCO) or primary care case management (PCCM) provider.))~~ If a conflict exists between the requirements of this chapter and other rules, the requirements of this chapter take precedence.

AMENDATORY SECTION (Amending WSR 15-24-098, filed 12/1/15, effective 1/1/16)

WAC 182-538-050 Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC, Medical definitions, apply to this chapter.

~~("Action")~~ "Administrative hearing" means the agency's administrative hearing process available to an enrollee under chapter 182-526 WAC for review of an adverse benefit determination in accordance with RCW 74.09.741.

"Adverse benefit determination" means one or more of the following:

(a) The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the state; ~~((¶))~~

(e) The failure of a managed care organization (MCO) to act within the time frames provided in 42 C.F.R. Sec. 438.408 (a), (b)(1) and (2) for standard resolution of grievances and appeals; or

(f) For a resident of a rural area with only one MCO, the denial of an enrollee's request to exercise the enrollee's right to obtain services outside the network under 42 C.F.R. Sec. 438.52 (b)(2)(ii).

"Agency" - See WAC 182-500-0010.

"Appeal" means a ((request by an enrollee or provider with written permission)) review by an MCO of an ((enrollee

for reconsideration of an action)) adverse benefit determination.

"**Apple health foster care (AHFC)**" means the managed care program developed by the agency and the department of social and health services to serve children and youth in foster care and adoption support and young adult alumni of the foster care program.

"**Assign**" or "**assignment**" means the agency selects an MCO to serve a client who has not selected an MCO.

"**Auto enrollment**" means the agency has automatically enrolled a client into an MCO in the client's area of residence.

"**Client**" means, for the purposes of this chapter, ~~((an individual))~~ a person eligible for any Washington apple health program, including managed care programs, but who is not enrolled with an MCO or PCCM provider.

"**Disenrollment**" - See "end enrollment."

"**Emergency medical condition**" means a condition meeting the definition in 42 C.F.R. Sec. 438.114(a).

"**Emergency services**" means services defined in 42 C.F.R. Sec. 438.114(a).

"**End enrollment**" means ending the enrollment of an enrollee for one of the reasons outlined in WAC 182-538-130.

"**Enrollee**" means ~~((an individual))~~ a person eligible for any Washington apple health program enrolled in managed care with an MCO or PCCM provider that has a contract with the state.

"**Enrollee's representative**" means a person with a legal right or written authorization from the enrollee to act on behalf of the enrollee in making decisions.

"**Enrollees with special health care needs**" means enrollees having chronic and disabling conditions and the conditions:

- (a) Have a biologic, psychologic, or cognitive basis;
- (b) Have lasted or are virtually certain to last for at least one year; and
- (c) Produce one or more of the following conditions stemming from a disease:
 - (i) Significant limitation in areas of physical, cognitive, or emotional function;
 - (ii) Dependency on medical or assistive devices to minimize limitation of function or activities; or
 - (iii) In addition, for children, any of the following:
 - (A) Significant limitation in social growth or developmental function;
 - (B) Need for psychological, educational, medical, or related services over and above the usual for the child's age; or
 - (C) Special ongoing treatments, such as medications, special diet, interventions, or accommodations at home or school.

"**Exemption**" means agency approval of a client's preenrollment request to remain in the fee-for-service delivery system for one of the reasons outlined in WAC 182-538-130.

"**Grievance**" means an expression of dissatisfaction about any matter other than an ~~((action, as "action" is defined in this section))~~ adverse benefit determination.

"**Grievance and appeal system**" means the ~~((overall system that includes grievances and appeals handled at the~~

~~MCO level and access to the agency's hearing process))~~ processes the MCO implements to handle appeals of adverse benefit determinations and grievances, as well as the processes to collect and track information about them.

"**Health care service**" or "**service**" means a service or item provided for the prevention, cure, or treatment of an illness, injury, disease, or condition.

"**Managed care**" means a comprehensive health care delivery system that includes preventive, primary, specialty, and ancillary services. These services are provided through either an MCO or PCCM provider.

"**Managed care contract**" means the agreement between the agency and an MCO to provide prepaid contracted services to enrollees.

"**Managed care organization**" or "**MCO**" means an organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with the agency under a comprehensive risk contract to provide prepaid health care services to enrollees under the agency's managed care programs.

"**Mandatory enrollment**" means the agency's requirement that a client enroll in managed care.

"**Mandatory service area**" means a service area in which eligible clients are required to enroll in an MCO.

"**Nonparticipating provider**" means a person, health care provider, practitioner, facility, or entity acting within their scope of practice and licensure that:

- (a) Provides health care services to enrollees; and
- (b) Does not have a written agreement with the managed care organization (MCO) to participate in the MCO's provider network.

"**Participating provider**" means a person, health care provider, practitioner, or entity acting within their scope of practice and licensure with a written agreement with the MCO to provide services to enrollees.

"**Primary care case management**" or "**PCCM**" means the health care management activities of a provider that contracts with the agency to provide primary health care services and to arrange and coordinate other preventive, specialty, and ancillary health services.

"**Primary care provider**" or "**PCP**" means a person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), naturopath, or a physician assistant who supervises, coordinates, and provides health services to a client or an enrollee, initiates referrals for specialist and ancillary care, and maintains the client's or enrollee's continuity of care.

"**Timely**" concerning the provision of services, means an enrollee has the right to receive medically necessary health care as expeditiously as the enrollee's health condition requires. Concerning authorization of services and grievances and appeals, "timely" means according to the agency's managed care program contracts and the time frames stated in this chapter.

AMENDATORY SECTION (Amending WSR 15-24-098, filed 12/1/15, effective 1/1/16)

WAC 182-538-110 The grievance and appeal system and agency administrative hearing for managed care organization(s) (MCO) enrollees. (1) **Introduction.** This section contains information about the grievance ~~((system for managed care organization (c)))~~ and appeal system and the right to an agency administrative hearing for MCO ~~((r))~~ enrollees. See WAC 182-538-111 for information about PCCM enrollees.

(2) Statutory basis and framework.

(a) Each MCO must have a grievance and appeal system in place for enrollees. ~~((The system must comply with the requirements of 42 C.F.R. 438 Subpart F, medicaid agency rules in Title 182 WAC, and the rules of the state office of insurance commissioner (OIC) in chapter 284-43 WAC.~~

~~((b))~~ The agency's hearing rules in chapter 182-526 WAC apply to administrative hearings requested by enrollees to review resolution of an enrollee 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.

~~((2))~~ (b) Once an MCO enrollee has completed the MCO appeals process, the MCO enrollee has the option of requesting an agency administrative hearing regarding any adverse benefit determination upheld by the MCO. See chapter 182-526 WAC.

(3) MCO grievance and appeal system - General requirements.

(a) The MCO grievance and appeal system must include:

(i) A process for addressing complaints about any matter that is not an ~~((action))~~ adverse benefit determination, which is ~~((called))~~ a grievance;

(ii) An appeal~~((s))~~ process to address enrollee requests for review of an MCO ~~((action))~~ adverse benefit determination; and

~~((iii))~~ ~~((Access to an independent review (IR) by an independent review organization (IRO) in accordance with RCW 48-43-535 and WAC 182-526-0200; and~~

~~((iv))~~ Access to the agency's administrative hearing process for review of an MCO's resolution of an appeal.

(b) MCOs must provide information describing the MCO's grievance and appeal system to all providers and sub-contractors.

(c) An MCO must have agency approval for written materials sent to enrollees regarding the grievance and appeal system and the agency's administrative hearing process under chapter 182-526 WAC.

(d) MCOs must inform enrollees in writing within fifteen calendar days of enrollment about enrollees' rights with instructions on how to use the MCO's grievance and appeal system and the agency's administrative hearing process.

(e) An MCO must give enrollees any reasonable assistance in completing forms and other procedural steps for grievances and appeals (e.g., interpreter services and toll-free numbers).

(f) An MCO must allow enrollees and their authorized representatives to file grievances and appeals orally as well as in writing including, but not limited to, U.S. mail, commercial delivery services, hand delivery, fax, and email. MCOs

may not require enrollees to provide written follow-up for a grievance or an appeal the MCO received orally.

(g) The MCO must resolve each grievance and appeal and provide notice of the resolution as expeditiously as the enrollee's health condition requires, and within the time frames identified in this section.

(h) The MCO must ensure that the ~~((individuals))~~ people who make decisions on grievances and appeals ~~((are individuals))~~:

(i) ~~((Who))~~ Neither were ~~((not))~~ involved in any previous level of review or decision making, nor a subordinate of any person who was so involved; and

(ii) Are health care professionals ~~((who have))~~ with appropriate clinical expertise in treating the enrollee's condition or disease if deciding any of the following:

(A) An appeal of an ~~((action))~~ adverse benefit determination concerning medical necessity;

(B) A grievance concerning denial of an expedited resolution of an appeal; or

(C) A grievance or appeal that involves any clinical issues.

~~((3))~~ (iii) Take into account all comments, documents, records, and other information submitted by the enrollee or the enrollee's representative without regard to whether the information was submitted or considered in the initial adverse benefit determination.

(4) The MCO grievance process.

(a) Only an enrollee or enrollee's authorized representative may file a grievance with ~~((an))~~ the MCO. A provider may not file a grievance on behalf of an enrollee without the enrollee's written consent.

(b) ~~((An))~~ The MCO must acknowledge receipt of each grievance ~~((filed orally or in writing))~~ within two business days. Acknowledgment may be orally or in writing.

(c) The MCO must complete the ~~((disposition))~~ resolution of a grievance and provide notice to the affected parties as expeditiously as the enrollee's health condition requires, but no later than forty-five days after receiving the grievance.

(d) The MCO must notify enrollees of the ~~((disposition))~~ resolution of grievances within five business days of determination.

(i) Notices of ~~((disposition))~~ resolution of grievances not involving clinical issues can be oral or in writing.

(ii) Notices of ~~((disposition))~~ resolution of grievances for clinical issues must be in writing.

(e) Enrollees do not have a right to an agency administrative hearing ~~((in regards))~~ to dispute the ~~((disposition))~~ resolution of a grievance unless the MCO fails to adhere to the notice and timing requirements for grievances.

(f) If the MCO fails to adhere to the notice and timing requirements for grievances, the enrollee is deemed to have completed the MCO's appeals process and may initiate an agency administrative hearing.

~~((4))~~ (5) MCO's notice of ~~((action))~~ adverse benefit determination.

(a) **Language and format requirements.** The notice of ~~((action))~~ adverse benefit determination must be in writing in the enrollee's primary language, and in an easily understood format, in accordance with 42 C.F.R. Sec. 438.404.

(b) **Content of notice** ~~((of action))~~. The notice of MCO ~~((action))~~ adverse benefit determination must explain:

(i) The ~~((MCO's action or action))~~ adverse benefit determination the MCO has made or intends to ~~((take))~~ make, and any pertinent effective date;

(ii) The reasons for the ~~((action))~~ adverse benefit determination, including citation to rules or regulations and the MCO criteria that were the basis of the decision;

(iii) The enrollee's right to receive upon request, free of charge, reasonable access to and copies of all documents, records, and other information relevant to the enrollee's adverse benefit determination, including medical necessity criteria and any processes, strategies, or evidentiary standards used in setting coverage limits;

(iv) The enrollee's right to file an appeal of the MCO adverse benefit determination, including information on the MCO appeal process and the right to request an agency administrative hearing;

~~((iv))~~ (v) The procedures for exercising the enrollee's rights;

~~((v))~~ (vi) The circumstances under which an appeal can be expedited ~~((resolution is available))~~ and how to request it;

~~((vi))~~ (vii) The enrollee's right to have benefits continued pending resolution of an appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services.

(c) **Timing of notice** ~~((of action))~~. The MCO must mail the notice of ~~((action))~~ adverse benefit determination within the following time frames:

(i) For termination, suspension, or reduction of previously authorized services, at least ten calendar days prior to ~~((such action))~~ the effective date of the adverse benefit determination in accordance with 42 C.F.R. Sec. 438.404 and 431.211. This time period does not apply if the criteria in 42 C.F.R. Sec. 431.213 or 431.214 are met. This notice must be mailed by a method that certifies receipt and assures delivery within three calendar days.

(ii) For denial of payment, at the time of any ~~((action))~~ adverse benefit determination affecting the claim. This applies only when the ~~((client))~~ enrollee can be held liable for the costs associated with the ~~((action))~~ adverse benefit determination.

(iii) For standard service authorization decisions that deny or limit services, as expeditiously as the enrollee's health condition requires not to exceed fourteen calendar days following receipt of the request for service. An extension of up to fourteen additional days may be allowed if:

(A) The enrollee or enrollee's provider requests the extension.

(B) The MCO determines and justifies to the agency upon request, a need for additional information and that the extension is in the enrollee's interest.

(iv) If the MCO extends the time frame for standard service authorization decisions, the MCO must:

(A) Give the enrollee written notice of the reason for the decision to extend and inform the enrollee of the right to file a grievance if the enrollee disagrees with that decision; and

(B) Issue and carry out its determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

(v) For expedited authorization decisions:

(A) In cases involving mental health drug authorization decisions, or where the provider indicates or the MCO determines that following the standard time frame could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, the MCO must make an expedited authorization decision and provide notice no later than ~~((three business days))~~ seventy-two hours after receipt of the request for service.

(B) The MCO may extend the ~~((three business days))~~ seventy-two-hour time frame up to fourteen calendar days if:

(I) The enrollee requests the extension; or

(II) The MCO determines and justifies to the agency, upon request, there is a need for additional information and it is in the enrollee's interest.

~~((5))~~ (6) **The MCO appeal**~~((s))~~ **process.**

(a) **Authority to appeal.** An enrollee, the enrollee's authorized representative, or the provider acting with the enrollee's written consent~~((s))~~ may appeal an ~~((MCO action))~~ adverse benefit determination from the MCO.

(b) **Oral appeals.** An MCO must treat oral inquiries about appealing an ~~((action))~~ adverse benefit determination as an appeal to establish the earliest possible filing date for the appeal. The oral appeal must be confirmed in writing by the MCO, unless the enrollee or provider requests an expedited resolution.

(c) **Acknowledgment letter.** The MCO must acknowledge in writing receipt of each appeal to both the enrollee and the requesting provider within ~~((three))~~ five calendar days of receiving the appeal request. The appeal acknowledgment letter sent by the MCO serves as written confirmation of an appeal filed orally by an enrollee.

(d) **Standard service authorization - Sixty-day deadline.** For appeals involving standard service authorization decisions, an enrollee must file an appeal within ~~((ninety))~~ sixty calendar days of the date on the MCO's notice of ~~((action))~~ adverse benefit determination. This time frame also applies to a request for an expedited appeal.

(e) **Previously authorized service - Ten-day deadline.** For appeals of ~~((actions))~~ adverse benefit determinations involving termination, suspension, or reduction of a previously authorized service, and the enrollee is requesting continuation of the service, the enrollee must file an appeal within ten calendar days of the MCO mailing notice of the ~~((action))~~ adverse benefit determination.

(f) **Untimely service authorization decisions.** When the MCO does not ~~((each))~~ make a service authorization decision~~((s))~~ within required time frames, it is considered a denial. In this case, the MCO sends a formal notice of ~~((action))~~ adverse benefit determination, including the enrollee's right to an appeal.

(g) **Appeal process requirements.** The MCO appeal~~((s))~~ process must:

(i) Provide the enrollee a reasonable opportunity to present evidence and allegations of fact or law, ~~((both))~~ in person ~~((and))~~, by telephone, or in writing. The MCO must inform the enrollee of the limited time available for this in the case of expedited resolution;

(ii) Provide the enrollee and the enrollee's representative opportunity before and during the appeal~~((s))~~ process to

examine the enrollee's case file, including medical records ~~((and any))~~, other relevant documents and records, and any new or additional evidence considered ~~((during the appeals process))~~, relied upon, or generated by the MCO (or at the direction of the MCO) in connection with the appeal of the adverse benefit determination. This information must be provided free of charge and sufficiently in advance of the resolution time frame for appeals as specified in this section; and

(iii) Include as parties to the appeal:

(A) The enrollee and the enrollee's representative; or

(B) The legal representative of the deceased enrollee's estate.

(h) **Level of appeal.** There will only be one level of review in the MCO appeals process.

(i) Time frames for resolution of appeals and notice to the enrollee. MCOs must resolve each appeal and provide notice as expeditiously as the enrollee's health condition requires, and within the following time frames:

(i) For standard resolution of appeals, including notice to the affected parties, no longer than ~~((forty-five))~~ thirty calendar days from the day the MCO receives the appeal. This includes appeals involving termination, suspension, or reduction of previously authorized services.

(ii) For expedited resolution of appeals, ~~((or appeals of mental health drug authorization decisions,))~~ including notice to the affected parties, no longer than ~~((three calendar days))~~ seventy-two hours after the MCO receives the appeal. ~~((+))~~ The MCO may extend the seventy-two-hour time frame up to fourteen calendar days if:

(A) The enrollee requests the extension; or

(B) The MCO determines and shows to the satisfaction of the agency, upon request, there is a need for additional information and it is in the enrollee's interest.

(iii) If the MCO fails to adhere to the notice and timing requirements for appeals, the enrollee is deemed to have completed the MCO's appeals process and may request an agency administrative hearing.

(j) Language and format requirements - Notice of resolution of appeal.

(i) The notice of the resolution of the appeal must be in writing in the enrollee's primary language and in an easily understood format, in accordance with 42 C.F.R. Sec. 438.10.

(ii) The notice of the resolution of the appeal must ~~((~~

~~((~~ Be in writing and ~~))~~ be sent to the enrollee and the requesting provider.

(iii) For notice of an expedited resolution, the MCO must also make reasonable efforts to provide oral notice.

~~((ii) Include))~~ **(k) Content of resolution of appeal.**

(i) The notice of resolution must include the results of the resolution process and the date it was completed ~~((~~

~~((~~ Administrative hearing rights. For appeals not resolved wholly in favor of the enrollee, the notice of resolution of the appeal must:

(i) 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;

(ii) Include information on the enrollee's right to receive services while the hearing is pending and how to make the request as described in the agency hearing rules in WAC 182-526-0200; and

~~((ii) Inform the enrollee that the enrollee may be held liable for the cost of services received for the first sixty days after an administrative hearing request is received by the agency or the office of administrative hearings (OAH), if the hearing decision upholds the MCO's action.~~

~~((6))~~);

(ii) For appeals not resolved wholly in favor of the enrollee, the notice of resolution must include:

(A) The right to request an agency administrative hearing under RCW 74.09.741 and chapter 182-526 WAC, and how to request the hearing;

(B) The right to request and receive benefits while an agency administrative hearing is pending, and how to make the request in accordance with subsection (9) of this section and the agency's administrative hearing rules in chapter 182-526 WAC;

(C) That the enrollee may be held liable for the cost of those benefits received for the first sixty days after the agency or the office of administrative hearings (OAH) receives an agency administrative hearing request, if the hearing decision upholds the MCO's adverse benefit determination. See RCW 74.09.741 (5)(g).

(7) MCO expedited appeal process.

(a) Each MCO must establish and maintain an expedited appeal ~~((review))~~ process ~~((for appeals))~~ when the MCO determines or the provider indicates that taking the time for a standard resolution of an appeal could seriously jeopardize the enrollee's life ~~((or))~~, physical or mental health, or ability to attain, maintain, or regain maximum function.

(b) The enrollee may file an expedited appeal either orally, according to WAC 182-526-0095, or in writing. No additional follow-up is required of the enrollee.

(c) The MCO must make a decision on the enrollee's request for expedited appeal and provide written notice as expeditiously as the enrollee's health condition requires and no later than ~~((three))~~ two calendar days after the MCO receives the appeal. The MCO must also make reasonable efforts to orally notify the enrollee of the decision.

(d) The MCO may extend the time frame for decision on the enrollee's request for an expedited appeal up to fourteen calendar days if:

(i) The enrollee requests the extension; or

(ii) The MCO determines and shows to the satisfaction of the agency, upon its request, that there is a need for additional information and the delay is in the enrollee's interest.

(e) The MCO must make reasonable efforts to provide the enrollee prompt verbal notice and provide written notice for any extension not requested by the enrollee with the reason for the delay.

(f) If the MCO grants an expedited appeal, the MCO must issue a decision as expeditiously as the enrollee's physical or mental health condition requires, but not later than ~~((three business days))~~ seventy-two hours after receiving the appeal. The MCO may extend the time frame for a decision and to provide notice to the enrollee for an expedited appeal, up to fourteen days, if:

(i) The enrollee requests the extension; or

(ii) The MCO determines and shows to the satisfaction of the agency, upon its request, that there is a need for additional information and the delay is in the enrollee's interest.

(g) The MCO must provide written notice for any extension not requested by the enrollee within two calendar days of the decision and inform the enrollee of the reason for the delay and the enrollee's right to file a grievance.

~~((g))~~ (h) If the MCO denies a request for expedited resolution of an appeal, it must:

(i) Process the appeal based on the time frame for standard resolution;

(ii) Make reasonable efforts to give the enrollee prompt oral notice of the denial; and

(iii) Provide written notice within two calendar days.

~~((h))~~ (i) The MCO must ensure that punitive action is not taken against a provider who requests an expedited resolution or supports an enrollee's appeal.

~~((7))~~ (8) **The right to an agency administrative hearing for managed care (MCO) enrollees.**

~~((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.))~~ **Authority to file.** Only an enrollee, the enrollee's authorized representative, or a provider with the enrollee's or authorized representative's written consent may request an administrative hearing. See RCW 74.09.741, WAC 182-526-0090, and 182-526-0155.

(b) **Right to agency administrative hearing.** If an enrollee has completed the MCO appeal process and does not agree with the MCO's resolution of ~~((an))~~ the appeal, the enrollee may file a request for an agency administrative hearing based on the rules in this section and the agency administrative hearing rules in ~~((WAC 182-526-0200))~~ chapter 182-526 WAC.

(c) **Deadline - One hundred twenty days.** An enrollee's request for an agency administrative hearing must be filed no later than one hundred twenty calendar days from the date of the written notice of resolution of appeal from the MCO.

(d) **Independent party.** The MCO is an independent party and responsible for its own representation in any agency 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.

~~((8))~~ (e) **Applicable rules.** The agency's administrative hearing rules in chapter 182-526 WAC apply to agency administrative hearings requested by enrollees to review the resolution of an enrollee appeal of an MCO adverse benefit determination.

(9) **Continuation of previously authorized services** ~~((during the appeal process)).~~

(a) The MCO must continue the enrollee's services if all of the following apply:

(i) The enrollee, or enrollee's authorized representative, or ~~((the))~~ provider with written consent files the appeal on or before the later of the following:

(A) Within ten calendar days of the MCO mailing the notice of ~~((action involving services previously authorized))~~ adverse benefit determination; or

(B) The intended effective date of the MCO's proposed ~~((action))~~ adverse benefit determination.

(ii) The appeal involves the termination, suspension, or reduction of ~~((an))~~ previously authorized ~~((course of treatment))~~ services;

(iii) The services were ordered by an authorized provider; and

(iv) The original period covered by the original authorization has not expired ~~((; and~~

~~((v) The enrollee requests an extension of services)).~~

(b) If the MCO continues or reinstates the enrollee's services while the appeal is pending at the enrollee's request, the services must be continued until one of the following occurs:

(i) The enrollee withdraws the MCO appeal;

~~((Ten calendar days pass after the MCO mails notice of the resolution of the appeal against the enrollee and the enrollee has not requested an agency administrative hearing with continuation of services during the ten-day time frame;~~

~~((iii))~~ The enrollee fails to request an agency administrative hearing within ten calendar days after the MCO sends the notice of an adverse resolution to the enrollee's appeal;

(iii) The enrollee withdraws the request for an agency administrative hearing; or

(iv) The office of administrative hearings (OAH) issues a hearing decision adverse to the enrollee ~~((;~~

~~((iv) The time period or service limits of a previously authorized service has been met)).~~

(c) If the final resolution of the appeal upholds the MCO's ~~((action))~~ adverse benefit determination, the MCO may recover from the enrollee the amount paid for the services provided to the enrollee for the first sixty calendar days after the agency or the office of administrative hearings (OAH) received a request for an agency administrative hearing ~~((was received by the agency or OAH)),~~ to the extent that services were provided solely because of the requirement for continuation of services.

~~((9))~~ (10) **Effect of reversed resolutions of appeals.**

(a) **Services not furnished while an appeal is pending.**

If the MCO ~~((;))~~ or a final order entered by the HCA board of appeals, as defined in chapter 182-526 WAC, or an independent review organization (IRO) reverses a decision to deny, limit, or delay services that were not provided while the appeal was pending, the MCO must authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires, but not later than seventy-two hours from the date it receives notice reversing the determination.

(b) **Services furnished while the appeal is pending.** If the MCO reverses a decision to deny authorization of services or the denial is reversed through an IRO or a final order of OAH or the board of appeals and the enrollee received the disputed services while the appeal was pending, the MCO must pay for those services.

AMENDATORY SECTION (Amending WSR 15-24-098, filed 12/1/15, effective 1/1/16)

WAC 182-538-140 Quality of care. (1) To assure that managed care enrollees receive quality health care services, the agency requires managed care organizations (MCOs) to comply with quality improvement standards detailed in the agency's managed care contract. ~~((MCO's))~~ MCOs must:

(a) Have a clearly defined quality organizational structure and operation, including a fully operational quality assessment, measurement, and improvement program;

(b) Have effective means to detect over and underutilization of services;

(c) Maintain a system for provider and practitioner credentialing and recredentialing;

(d) Ensure that MCO subcontracts and the delegation of MCO responsibilities align with agency standards;

(e) Ensure MCO oversight of delegated entities responsible for any delegated activity to include:

(i) A delegation agreement with each entity describing the responsibilities of the MCO and the entity;

(ii) Evaluation of the entity before delegation;

(iii) An annual evaluation of the entity; and

(iv) Evaluation or regular reports and follow-up on issues that are not compliant with the delegation agreement or the agency's managed care contract specifications.

(f) Cooperate with an agency-contracted, qualified independent external quality review organization (EQRO) conducting review activities as described in 42 C.F.R. Sec. 438.358;

(g) Have an effective mechanism to assess the quality and appropriateness of care furnished to enrollees with special health care needs;

(h) Assess and develop individualized treatment plans for enrollees with special health care needs which ensure integration of clinical and nonclinical disciplines and services in the overall plan of care;

(i) Submit annual reports to the agency on performance measures as specified by the agency;

(j) Maintain a health information system that:

(i) Collects, analyzes, integrates, and reports data as requested by the agency;

(ii) Provides information on utilization, grievances and appeals, enrollees ending enrollment for reasons other than the loss of medicaid eligibility, and other areas as defined by the agency;

(iii) Retains enrollee grievance and appeal records described in 42 C.F.R. Sec. 438.416, base data as required by 42 C.F.R. Sec. 438.5(c), MLR reports as required by 42 C.F.R. Sec. 438.8(k), and the data, information, and documentation specified in 42 C.F.R. Secs. 438.604, 438.606, 438.408, and 438.610 for a period of no less than ten years;

(iv) Collects data on enrollees, providers, and services provided to enrollees through an encounter data system, in a standardized format as specified by the agency; and

~~((iv))~~ (v) Ensures data received from providers is adequate and complete by verifying the accuracy and timeliness of reported data and screening the data for completeness, logic, and consistency.

(k) Conduct performance improvement projects designed to achieve significant improvement, sustained over time, in clinical care outcomes and services, and that involve the following:

(i) Measuring performance using objective quality indicators;

(ii) Implementing system changes to achieve improvement in service quality;

(iii) Evaluating the effectiveness of system changes;

(iv) Planning and initiating activities for increasing or sustaining performance improvement;

(v) Reporting each project status and the results as requested by the agency; and

(vi) Completing each performance improvement project timely so as to generally allow aggregate information to produce new quality of care information every year.

(l) Ensure enrollee access to health care services;

(m) Ensure continuity and coordination of enrollee care;

(n) Maintain and monitor availability of health care services for enrollees;

(o) Perform client satisfaction surveys; and

(p) Obtain and maintain national committee on quality assurance (NCQA) accreditation.

(2) The agency may:

(a) Impose intermediate sanctions under 42 C.F.R. Sec. 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; and

(c) Impose sanctions for noncompliance with any contractual, state, or federal requirements not corrected.

AMENDATORY SECTION (Amending WSR 16-05-051, filed 2/11/16, effective 4/1/16)

WAC 182-538A-110 The grievance and appeal system, and agency administrative hearing for fully integrated managed care (FIMC) managed care organization((s)) (MCO((s))) enrollees. 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))~~ follow the same rules and process described in WAC 182-538-110.

AMENDATORY SECTION (Amending WSR 16-05-051, filed 2/11/16, effective 4/1/16)

WAC 182-538B-110 Grievance and appeal system and agency administrative hearing. (1) **Introduction.** This section contains information about the managed care organization (MCO) grievance and appeal system and the agency's administrative hearing process 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 and appeal system and access to an agency administrative hearing to allow enrollees to file grievances and seek review of an MCO action as defined in this chapter.

(b) The agency's administrative hearing rules in chapter 182-526 WAC apply to agency 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 and appeal system.** The MCO grievance and appeal 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))~~ the enrollee's 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 agency administrative hearing in regards to the ~~((disposition))~~ resolution 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))~~ resolution 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 in writing receipt of each appeal to both the enrollee and the requesting provider within ~~((three))~~ five calendar days of receiving the appeal request. The appeal acknowledgment letter sent by the MCO serves as written confirmation of an appeal filed orally by an enrollee.

(d) The enrollee must file an appeal of an MCO action ~~((must be filed))~~ within ~~((ninety))~~ sixty calendar days of the date on the MCO's notice of action.

(e) The MCO ~~((will))~~ is not ~~((be))~~ obligated to continue services pending the results of an appeal or subsequent agency administrative hearing.

(f) The MCO appeal~~(s)~~ 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))~~ representative the enrollee's case file, including medical records, other documents and records, and any new or additional evidence considered, relied upon,

or generated by the MCO, PIHP or PAHP (or at the direction of the MCO, PIHP or PAHP) in connection with the action. This information must be provided free of charge and sufficiently in advance of the resolution time frame for appeals as specified in this section; 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))~~ people 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))~~ seventy-two hours 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.

(j) Deemed completion of the appeals process. If the MCO fails to adhere to the notice and timing requirements for appeals, the enrollee is deemed to have completed the MCO's appeals process and may request an agency administrative hearing under WAC 182-526-0200.

(5) **Agency administrative hearing.**

(a) Only an enrollee or enrollee's authorized representative may request an agency 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 and has completed the MCO appeal process, 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. The enrollee must request an agency administrative hearing within ninety calendar days of the notice of resolution of appeal.

(c) An MCO is an independent party and responsible for its own representation in any agency 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.))~~ **Available resources exhausted.** When available resources are exhausted, any appeals process, independent review, or agency 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.

WSR 17-23-200

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed November 22, 2017, 11:57 a.m., effective December 23, 2017]

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

Purpose: The agency is amending these rules to implement the crisis services provided by the administrative services organizations to reflect changes in the use of managed care delivery systems; the changes are primarily related to the grievance and appeals process rules.

A public hearing was originally held on these rule amendments on May 9, 2017. However, the proposal erroneously added a provision for independent review in WAC 182-538C-040 (5)(b). The current amendment does not include that provision. The agency is also striking language that allows up to forty-five days for an appeal determination.

Citation of Rules Affected by this Order: Amending WAC 182-538C-040 and 182-538C-110.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 17-15-060 on July 13, 2017.

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 the Request of a Non-governmental 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 22, 2017.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-051, filed 2/11/16, effective 4/1/16)

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))~~ people, 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 (ombudsman).

(b) The BH-ASO may provide substance use disorder crisis services within available resources to all ~~((individuals))~~ people, regardless of the ~~((individual's))~~ person's insurance status, income level, ability to pay, and county of residence.

(c) The BH-ASO provides the following services to ~~((individuals))~~ people 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))~~ people 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 and appeal system and the agency's administrative hearing rules in chapter 182-538 WAC apply

instead of the grievance and appeal system and hearing rules in this chapter.

AMENDATORY SECTION (Amending WSR 16-15-030, filed 7/13/16, effective 8/13/16)

WAC 182-538C-110 Grievance and appeal system and agency administrative hearing for behavioral health administrative services organizations (BH-ASOs). (1)

General. This section applies to the behavioral health administrative service organization (BH-ASO) grievance system for people within fully integrated managed care (FIMC) regional service areas.

(a) The BH-ASO must have a grievance and appeal system to allow a person to file a grievance and request a review of a BH-ASO action as defined in this chapter.

(b) The agency's administrative hearing rules in chapter 182-526 WAC apply to agency administrative hearings requested by a person to review the 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.

(e) The BH-ASO is not obligated to continue services pending the results of an appeal or subsequent agency administrative hearing.

(2) **The BH-ASO grievance and appeal system.** The BH-ASO grievance system includes:

(a) A process for addressing complaints about any matter that is not an action(~~(, which is called a grievance)~~);

(b) An appeal(~~(s)~~) process to address a person's request for a review of a BH-ASO action as defined in this chapter; and

(c) Access to the agency's administrative hearing process for a person to request a review of a BH-ASO's resolution of an appeal.

(3) **The BH-ASO grievance process.**

(a) A person or a person's authorized representative may file a grievance with a BH-ASO. A provider may not file a grievance on behalf of a person without the written consent of the person or the person's authorized representative.

(b) There is no right to an agency administrative hearing regarding the BH-ASO's decision on a grievance, since a grievance is not an action.

(c) The BH-ASO must notify a person of the decision regarding the person's grievance within five business days of the decision.

(4) **The BH-ASO appeal(~~(s)~~) process.**

(a) Parties to the appeal include:

(i) The person and the person's authorized or legal representative; or

(ii) The authorized representative of the deceased person's estate.

(b) A person, the person's authorized representative, or the provider acting with the person's written consent may appeal a BH-ASO action.

(c) A BH-ASO must treat oral inquiries about appealing an action as an appeal in order to establish the earliest possible filing date for the appeal.

(d) The BH-ASO must confirm any oral appeal in writing to the person or provider acting on behalf of the person.

(e) The person or provider acting on behalf of the person must file an appeal, either orally or in writing, within (~~ninety~~) sixty calendar days of the date on the BH-ASO's notice of action.

(f) The BH-ASO must acknowledge receipt of each appeal to both the person and the provider requesting the service within three calendar days of receipt. The appeal acknowledgment letter sent by the BH-ASO serves as written confirmation of an appeal filed orally by a person.

(g) If the person requests an expedited appeal for a crisis-related service, the BH-ASO must make a decision on whether to grant the person's request for expedited appeal and provide written notice as expeditiously as the person's health condition requires, within three calendar days after the BH-ASO receives the appeal. The BH-ASO must make reasonable efforts to provide oral notice.

(h) The BH-ASO appeal(~~(s)~~) process:

(i) Provides the person a reasonable opportunity to present evidence and allegations of fact or law in writing.

(ii) Provides the person and the person's authorized representative opportunity before and during the appeals process to examine the person's case file, including medical records and any other documents and records considered during the appeal(~~(s)~~) process free of charge.

(iii) If the person requests an expedited appeal, the BH-ASO must inform the person that it may result in the person having limited time to review records and prepare for the appeal.

(i) The BH-ASO ensures the staff 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 person's condition or disease if deciding any of the following:

(A) An appeal of an action; or

(B) An appeal that involves any clinical issues.

(j) Time frames for standard resolution of appeals.

(i) For appeals involving termination, suspension, or reduction of previously authorized noncrisis services, the BH-ASO must make a decision within fourteen calendar days after receipt of the appeal.

(ii) If the BH-ASO cannot resolve an appeal within fourteen calendar days, the BH-ASO must notify the person that an extension is necessary to complete the appeal.

(k) Time frames for expedited appeals for crisis-related services or behavioral health prescription drug authorization decisions.

(i) The BH-ASO must resolve the expedited appeal and provide notice of the decision no later 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 person requests the extension; or

(B) The BH-ASO determines additional information is needed and the delay is in the interests of the person.

(iii) If the BH-ASO denies a request for expedited resolution of a noncrisis related service appeal, it must:

(A) Process the appeal based on the time frame for standard resolution;

(B) Make reasonable efforts to give the person prompt oral notice of the denial; and

(C) Follow-up within two calendar days of the oral notice with a written notice of denial.

(l) Extension of a standard resolution or expedited appeal not requested by the person.

(i) The BH-ASO must notify the person in writing of the reason for the delay, if not requested by that person.

(ii) The extension cannot delay the decision beyond twenty-eight calendar days of the request for appeal, without the informed written consent of the person.

~~((iii) The appeal determination must not exceed forty-five calendar days from the day the BH-ASO receives the appeal.))~~

(m) Notice of resolution of appeal. The notice of the resolution of the appeal must:

(i) Be in writing and be sent to the person 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 agency 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 person.

(5) Agency administrative hearings.

(a) Only a person or a person's authorized representative may request an agency administrative hearing. A provider may not request a hearing on behalf of a person.

(b) If a person does not agree with the BH-ASO's resolution of an appeal, the person 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 agency administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

~~((d) A person 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 on appeal by the BH-ASO or through a final order from the agency administrative hearing process, the BH-ASO must authorize or provide the disputed services promptly and as expeditiously as the person's health condition requires.

~~((Grievance system termination.))~~ **Available resources exhausted.** 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.

WSR 17-23-201

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed November 22, 2017, 11:59 a.m., effective December 23, 2017]

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

Purpose: The agency is revising these rules (1) to allow for support staff to confirm receipt of filed documents, rather than a judge in WAC 182-526-0070; (2) add language to WAC 182-526-0155 that was inadvertently omitted in a previous version; and (3) clarify where the hearing may take place in WAC 182-526-0200(3).

Citation of Rules Affected by this Order: Amending WAC 182-526-0070, 182-526-0155, and 182-526-0200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 74.09.741, chapter 34.05 RCW.

Adopted under notice filed as WSR 17-19-107 on September 20, 2017.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
Original WAC 182-526-0070 Filing of documents.		
Proposed	(3) Filing is complete when the documents are received by OAH or BOA during office hours, 8:00 a.m. to 5:00 p.m. If the documents are received after normal office hours, the filing is effective the next business day.	The agency is revising this section to clarify when it considers documents as filed.
Adopted	(3) Filing is complete when the documents are received by OAH or BOA during office hours , <u>business days between 8:00 a.m. to 5:00 p.m.</u> If the documents are received <u>after 5:00 p.m. on a business day</u> , the filing is effective the next business day.	
Original WAC 182-526-0200 Enrollee appeals of a managed care organization action.		

Proposed/Adopted	WAC Subsection	Reason
Proposed	(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may request a hearing <u>at the place and address on the notice. The enrollee must request the hearing</u> within ninety calendar days of the date of receipt of the MCO's notice of resolution of the MCO's appeal process.	The agency is revising language regarding the hearing request based on stakeholder comments to clarify this section. We
Adopted	(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may request a hearing <u>orally or in writing to the contact information on the written notice. The enrollee must request the hearing</u> within <u>ninety one hundred twenty</u> calendar days of the date of receipt of the MCO's notice of resolution of the MCO's appeal process.	changed the ninety day deadline to one hundred twenty days to align with the federal managed care regulations.

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 the 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 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 0, Amended 3, Repealed 0.
 Date Adopted: November 22, 2017.

Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0070 Filing documents. (1) Filing is the act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

(2) The date of filing is the date documents are received by OAH or BOA.

(3) Filing is complete when the documents are received by OAH or BOA during ~~((office hours))~~ business days between 8:00 a.m. to 5:00 p.m. If the documents are received after ~~((normal office hours))~~ 5:00 p.m. on a business day, the filing is effective the next business day.

(4) A party may file documents by delivering them to OAH or BOA by:

- (a) Personal service (e.g., hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax transmission;
- (d) Commercial delivery service; or
- (e) Legal messenger service.

(5) A party may deliver documents for filing by email only if OAH or BOA staff agreed to accept electronically filed documents. A party must obtain confirmation of receipt of the filing from the ~~((ALJ))~~ OAH or ~~((review judge))~~ BOA staff to prove that the documents were successfully filed.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0155 Appellant's representation in the hearing. (1) An appellant may act as his or her own representative or may choose to have someone represent him or her including, but not limited to, a friend, relative, community advocate, attorney or paralegal.

(2) All parties, including the health care authority (HCA) and their representatives, must provide their name, address, and telephone number to the office of administrative hearings (OAH) and all other parties prior to the hearing.

(3) The administrative law judge (ALJ) may require an appellant's representative to file a written notice of appearance, limited notice of appearance, or other documentation authorizing the representative to appear on behalf of the appellant.

(4) In cases involving confidential information, the representative must file a legally sufficient signed written consent or release of information document with HCA or HCA's authorized agent.

(5) If an appellant is represented by an attorney admitted to practice law in Washington state, the attorney must file a notice of appearance or limited notice of appearance and a notice of withdrawal if the attorney stops representing the party before the hearing process ends.

~~((5))~~ (6) The following restrictions apply to an appellant's representative:

- (a) HCA and HCA's authorized agents do not pay for an appellant's representation.
- (b) OAH does not pay for an appellant's representation.
- (c) The following ~~((persons))~~ people may not act as an appellant's representative in a hearing under this chapter:
 - (i) An employee of HCA;
 - (ii) HCA's authorized agent;
 - (iii) An employee of the department of social and health services (DSHS);
 - (iv) An employee of OAH; or
 - (v) Anyone under eighteen years of age.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0200 Enrollee appeals of a managed care organization action. (1) The hearing process described in this chapter applies to enrollee appeals of a health care authority (HCA)-contracted managed care organization (MCO) action. Where a conflict exists, the requirements in this section prevail.

(2) An MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to requesting a hearing with HCA. See WAC 182-538-110.

(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may request a hearing orally or in writing to the contact information on the written notice. The enrollee must request the hearing within ((ninety)) one hundred twenty calendar days of the date of receipt of the MCO's notice of resolution of the MCO's appeal process.

(a) An enrollee may request continuation of services pending the outcome of a hearing related to the termination, suspension, or reduction of a previously authorized service.

(b) To receive continuation of services pending the outcome of the hearing, the enrollee must request a hearing and request to continue services within ten days of the date of the MCO's notice of the resolution of the appeal. See WAC 182-538-110 for additional requirements related to continuation of services.

(4) The entire appeal and hearing process, including the MCO appeal process, must be completed within ninety calendar days of the date the MCO enrollee filed the appeal with the MCO, not including the number of days the enrollee took to subsequently file for a hearing.

(5) Expedited hearing process.

(a) The office of administrative hearings (OAH) must establish and maintain an expedited hearing process when the enrollee or the enrollee's representative requests an expedited hearing and OAH determines that the time taken for a standard resolution of the claim could seriously jeopardize the enrollee's life or health and ability to attain, maintain, or regain maximum function.

(b) When approving an expedited hearing, OAH must issue a hearing decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the case file and information from the MCO regarding the action and MCO appeal.

(c) When denying an expedited hearing, OAH must give prompt oral notice to the enrollee followed by written notice within two calendar days of the request and change the hearing to the standard time frame.

(6) Parties to the hearing include HCA, the MCO, the enrollee and the enrollee's representative or the representative of a deceased enrollee's estate.

(7) Any party that disagrees with the initial order may request a review by an HCA review judge in accordance with WAC 182-526-0560 through 182-526-0600.

(8) If an enrollee disagrees with the initial order, the enrollee may request review in accordance with subsection (7) of this section, or an independent review (IR) by an independent review organization (IRO) in accordance with RCW 48.43.535. The enrollee must request the IR within twenty-

one calendar days of the date of mailing the initial order. A timely submitted request for an IR stays any review requested pursuant to subsection (7) of this section.

(9) Any party that disagrees with the IR decision may request a review by an HCA review judge in accordance with WAC 182-526-0560 through 182-526-0600 within twenty-one calendar days of the date of mailing of the IR decision.

(10) When an initial order or an IR decision is appealed to an HCA review judge, the review judge issues the final order.