

WSR 17-24-059
PROPOSED RULES
HORSE RACING COMMISSION

[Filed December 4, 2017, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-036.

Title of Rule and Other Identifying Information: WAC 260-60-410 Claimed horse—In whose interest run—Delivery and passage of title.

Hearing Location(s): On January 12, 2018, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 12, 2018.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-459-6461, by January 5, 2018.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, TTY 360-459-6462, email patty.brown@whrc.state.wa.us, by January 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Corrects a conflict with WAC 260-60-460 regarding cancellations of a claim.

Reasons Supporting Proposal: In 2017 the Washington horse racing commission (WHRC) amended WAC 260-60-460 allowing the stewards to cancel a claim if the horse suffers a catastrophic injury during the running of the race. WAC 260-60-410 also refers to cancellations and it was discovered there was a conflict between the two rules. This amendment corrects the conflict.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: WHRC, governmental.

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

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

December 4, 2017
 Douglas L. Moore
 Executive Secretary

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

WAC 260-60-410 Claimed horse—In whose interest run—Delivery and passage of title. Any purse moneys and prizes earned by a claimed horse will be awarded to the owner that entered the horse. All claims are valid and ownership of the claimed horse is official from the time the claimed

horse becomes a "starter." The successful claimant becomes the owner of the horse, whether it (~~(be alive or dead)~~) is sound (~~(or)~~), unsound, or injured during the race or after it, unless the claim is canceled in accordance with WAC 260-60-460(2). Transfer of possession of a claimed horse will take place immediately after the race has been run unless otherwise directed by the stewards. If the horse is required to be taken to the test barn for post-race testing, the successful claimant or his/her representative must maintain physical custody of the claimed horse. However, the original owner, trainer or his/her representative will accompany the horse, observe the testing procedure and sign the test sample tag.

WSR 17-24-065
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed December 4, 2017, 1:54 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool? and 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool?

Hearing Location(s): On January 10, 2018, at 9:00 a.m., at the Office of Financial Management (OFM), Raad Building, 128 10th Avenue, 4th Floor, Conference Room 429, Olympia, WA 98501.

Date of Intended Adoption: January 10, 2018.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by January 3, 2018.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by January 3, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of proposed WAC 357-31-687 is to clarify that an employee must first use all of their accrued compensatory time, recognition leave, personal holiday, vacation leave, and paid military leave before receiving shared leave from the uniformed service shared leave pool. The purpose of proposed WAC 357-31-797 is to clarify that an employee must first use all of their accrued compensatory time, recognition leave, personal holiday, sick leave, and vacation leave before receiving shared leave from the veterans, in-state service shared leave pool.

Reasons Supporting Proposal: This proposal provides clarity, which is needed to ensure proper implementation.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.133.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, 360-407-4141.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

December 4, 2017

Roselyn Marcus
Assistant Director
of Legal and Legislative Affairs

NEW SECTION

WAC 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool? Employees who are eligible to receive shared leave from the uniformed service shared leave pool must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, vacation leave, and paid military leave allowed under RCW 38.40.060 before receiving shared leave from the uniformed service shared leave pool.

NEW SECTION

WAC 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool? Employees who are eligible to receive shared leave from the veterans' in-state service shared leave pool must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, and vacation leave before receiving shared leave from the veterans' in-state service shared leave pool.

WSR 17-24-066 PROPOSED RULES

OFFICE OF FINANCIAL MANAGEMENT

[Filed December 4, 2017, 1:56 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-835 What is the purpose of the foster parent shared leave pool?, 357-31-840 Who shall administer the foster parent shared leave pool?, 357-31-845 What definitions apply to the foster parent shared leave pool?, 357-31-850 Must

employers have a written policy regarding the foster parent shared leave pool?, 357-31-855 Is participation in the foster parent shared leave pool voluntary?, 357-31-860 Which employees are eligible to request shared leave from the foster parent shared leave pool?, 357-31-865 How must employees who are receiving shared leave from the foster parent shared leave pool be treated during their absence?, 357-31-870 May the receiving employee's employer restrict the amount of shared leave an eligible employee may receive, per occurrence, to care for a foster child?, 357-31-873 Is there a limit to the amount of shared leave an eligible employee may receive, per occurrence, to prepare to accept a foster child in their home?, 357-31-875 What is the total amount of shared leave an eligible employee may receive under the foster parent shared leave pool?, 357-31-880 Is shared leave received under the foster parent shared leave pool included in the shared leave limits specified in RCW 41.04.665?, 357-31-885 May employees donating leave for the purpose of the foster parent shared leave pool direct the donation to a specific individual?, 357-31-890 What types of leave may an employee donate to the foster parent shared leave pool?, 357-31-895 Must employees use their own leave before receiving shared leave from the foster parent shared leave pool?, 357-31-900 What salary will an eligible employee receive when withdrawing shared leave from the foster parent shared leave pool?, 357-31-905 What documentation is an employee seeking shared leave under the foster parent shared leave pool required to submit to their current employer?, 357-31-910 What happens if the foster parent shared leave pool does not have a sufficient balance to cover shared leave requests?, 357-31-915 May an agency head, higher education president or designee establish restrictions on the amount of leave an employee may donate to the foster parent shared leave pool?, and 357-31-920 When an employer and/or the department of social and health services has determined that abuse of the foster parent shared leave pool has occurred will the employee be required to repay the shared leave drawn from the pool?

Hearing Location(s): On January 10, 2018, at 9:00 a.m., at the Office of Financial Management (OFM), Raad Building, 128 10th Avenue, 4th floor, Conference Room 429, Olympia, WA 98501.

Date of Intended Adoption: January 10, 2018.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by January 3, 2018.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by January 3, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 2ESSB 5890 creates the foster parent shared leave pool to allow state employees to donate leave to be used by state employees who are licensed foster parents pursuant to RCW 74.15.040. The leave can be used to care for a foster child or to prepare to accept a foster child in their home.

Reasons Supporting Proposal: To align Title 357 WAC with the changes in 2ESSB 5890 which was effective on October 19, 2017.

Statutory Authority for Adoption: Chapter 41.04 RCW.
Statute Being Implemented: RCW 41.04.674.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, 360-407-4141.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

December 4, 2017

Roselyn Marcus

Assistant Director

of Legal and Legislative Affairs

NEW SECTION

WAC 357-31-835 What is the purpose of the foster parent shared leave pool? The foster parent shared leave pool was created to allow state employees to voluntarily donate their leave to be used by any eligible employee who is a licensed foster parent pursuant to RCW 74.15.040 so they may:

- (1) Care for a foster child; and/or
- (2) Prepare to accept a foster child in their home.

NEW SECTION

WAC 357-31-840 Who shall administer the foster parent shared leave pool? The department of social and health services, in consultation with office of financial management, shall administer the foster parent shared leave pool.

NEW SECTION

WAC 357-31-845 What definitions apply to the foster parent shared leave pool? The following definitions apply to the foster parent shared leave pool:

"Caring for" means taking a foster child to health care appointments, court appointments, visitation with family members and/or any other reasons that sick leave may be used for in WAC 357-31-130.

"Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained as defined in RCW 41.04.655.

"Monthly salary" means the monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. Monthly salary does not include overtime pay, callback pay, standby pay or performance bonuses.

"Preparing for" means arranging a foster child's living space, enrolling in school, and/or enrolling in child care.

NEW SECTION

WAC 357-31-850 Must employers have a written policy regarding the foster parent shared leave pool?

Each employer must have a written policy regarding the foster parent shared leave pool which at a minimum addresses:

- (1) Amount of leave that may be withdrawn from the pool;
- (2) Eligibility requirements for use of the pool;
- (3) Donation of leave to the pool;
- (4) Use of foster parent shared leave; and
- (5) Misuse of pool.

NEW SECTION

WAC 357-31-855 Is participation in the foster parent shared leave pool voluntary? Participation in the foster parent shared leave pool must at all times be voluntary on the part of the donating and receiving employee.

NEW SECTION

WAC 357-31-860 Which employees are eligible to request shared leave from the foster parent shared leave pool? Employees who are licensed foster parents pursuant to RCW 74.15.040 are eligible to request shared leave from the foster parent shared leave pool.

NEW SECTION

WAC 357-31-865 How must employees who are receiving shared leave from the foster parent shared leave pool be treated during their absence? An employee using shared leave under the foster parent shared leave pool receives the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued vacation leave or sick leave.

NEW SECTION

WAC 357-31-870 May the receiving employee's employer restrict the amount of shared leave an eligible employee may receive, per occurrence, to care for a foster child? The receiving employee's employer may limit the amount of shared leave their eligible employee receives, per occurrence, under the foster parent shared leave pool to care for a foster child.

NEW SECTION

WAC 357-31-873 Is there a limit to the amount of shared leave an eligible employee may receive, per occurrence, to prepare to accept a foster child in their home? An eligible employee may receive up to five days of shared leave, per occurrence, from the foster parent shared leave pool to prepare to accept a foster child in their home.

NEW SECTION

WAC 357-31-875 What is the total amount of shared leave an eligible employee may receive under the foster parent shared leave pool? An eligible employee may receive up to five hundred twenty-two days of shared leave under the foster parent shared leave pool during their total state employment.

NEW SECTION

WAC 357-31-880 Is shared leave received under the foster parent shared leave pool included in the shared leave limits specified in RCW 41.04.665? Shared leave received under the foster parent shared leave pool is separate from and not included in the five hundred twenty-two day total specified in RCW 41.04.665.

NEW SECTION

WAC 357-31-885 May employees donating leave for the purpose of the foster parent shared leave pool direct the donation to a specific individual? Leave donated under this section is donated to the foster parent shared leave pool and cannot be directed to a specific individual. Foster parent shared leave is withdrawn from the pool by eligible employees according to priorities established by the department of social and health services. All employees who donate must specifically direct their leave donation to the foster parent shared leave pool.

NEW SECTION

WAC 357-31-890 What types of leave may an employee donate to the foster parent shared leave pool? An employee may donate vacation leave, sick leave, and all or part of a personal holiday to the foster parent shared leave pool as follows:

(1) Vacation leave: The donating employee's employer approves the employee's request to donate a specified amount of vacation leave to the foster parent shared leave pool. The full-time employee's request to donate leave will not cause their vacation leave balance to fall below eighty hours after the transfer. For part-time employees, requirements for vacation leave balances are prorated.

(2) Sick leave: The donating employee's employer approves the employee's request to donate a specified amount of sick leave to the foster parent shared leave pool. The employee's request to donate leave will not cause their sick leave balance to fall below one hundred seventy-six hours after the transfer.

(3) Personal holiday: The donating employee's employer approves the employee's request to donate all or part of their personal holiday to the foster parent shared leave pool.

NEW SECTION

WAC 357-31-895 Must employees use their own leave before receiving shared leave from the foster parent shared leave pool? Employees who are eligible to receive shared leave from the foster parent shared leave pool must

first use all accrued compensatory time, recognition leave as described in WAC 357-31-565, and personal holiday before requesting shared leave from the foster parent shared leave pool. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

NEW SECTION

WAC 357-31-900 What salary will an eligible employee receive when withdrawing shared leave from the foster parent shared leave pool? Shared leave paid under the foster parent shared leave pool must not exceed the level of the employee's state monthly salary as defined in WAC 357-31-845.

NEW SECTION

WAC 357-31-905 What documentation is an employee seeking shared leave under the foster parent shared leave pool required to submit to their current employer? Employees seeking shared leave under the foster parent shared leave pool must provide proof of a current foster parent license to their current employer.

NEW SECTION

WAC 357-31-910 What happens if the foster parent shared leave pool does not have a sufficient balance to cover shared leave requests? Foster parent shared leave may not be granted unless the pool has a sufficient balance to fund the requested shared leave.

NEW SECTION

WAC 357-31-915 May an agency head or higher education president establish restrictions on the amount of leave an employee may donate to the foster parent shared leave pool? An agency head or higher education president may limit the amount of leave an employee may donate to the foster parent shared leave pool.

NEW SECTION

WAC 357-31-920 When an employer and/or the department of social and health services has determined that abuse of the foster parent shared leave pool has occurred will the employee be required to repay the shared leave drawn from the pool? Employers and/or the department of social and health services must investigate any alleged abuse of the foster parent shared leave pool and on a finding of wrongdoing the employee may be required to repay all of the shared leave received from the foster parent shared leave pool. The only time an employee will have to repay leave credits is when there is a finding of wrongdoing.

WSR 17-24-067
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed December 4, 2017, 1:57 p.m.]

Assistant Director
of Legal and Legislative Affairs

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-447 When must an agency head or higher education institution president approve a shared leave request for an employee?

Hearing Location(s): On January 10, 2018, at 9:00 a.m., at the Office of Financial Management (OFM), Raad Building, 128 10th Avenue, 4th Floor, Conference Room 429, Olympia, WA 98501.

Date of Intended Adoption: January 10, 2018.

Submit Written Comments to: Brandy Chinn, OFM, P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by January 3, 2018.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by January 3, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of amending WAC 357-31-447 is to correct the reference from "employer" to "agency head or higher education institution president." The purpose of amending WAC 357-31-447(1) is to clarify that if an employee has a need to use shared leave due to the same condition that has been previously approved, they must be employed with the same employer that approved the original shared leave request in order for the closed account to be reopened.

Reasons Supporting Proposal: Under the shared leave statute, RCW 41.04.665, it is up to the individual agency head or higher education institution president to approve an employee's shared leave request. This proposal provides clarity, which is needed to ensure proper implementation.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.665.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, 360-407-4141.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

December 4, 2017
Roselyn Marcus

AMENDATORY SECTION (Amending WSR 17-18-030, filed 8/28/17, effective 10/2/17)

WAC 357-31-447 When must an ((employer)) agency head or higher education institution president approve a shared leave request for an employee? An ((employer)) agency head or higher education institution president must approve a shared leave request for an employee:

(1) If a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account and the employee is employed with the same employer that approved the original shared leave request; or

(2) To allow employees that are veterans as defined under RCW 41.04.005, and employees that are spouses of veterans who are required to provide assistance for their spouses to attend medical appointments or treatments for a service connected injury or disability, to access shared leave from the veterans' in-state service shared leave pool.

WSR 17-24-068
PROPOSED RULES
GAMBLING COMMISSION

[Filed December 4, 2017, 2:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-20-017.

Title of Rule and Other Identifying Information: Amending chapter 230-06 WAC submission of electronic or mechanical gambling equipment during rule making.

Hearing Location(s): On January 11, 2018, at 1:00 p.m., at the Hampton Inn and Suites, 4301 Martin Way East, Olympia, WA 985016 [98506]. Hearing will take place at the January commission meeting. The meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov about seven days before the meeting, select "January commission meeting" to confirm the hearing date, location, and start time.

Date of Intended Adoption: January 11, 2018.

Submit Written Comments to: Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, fax 360-486-3453, by January 3, 2018.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email Julie.anderson@wsgc.wa.gov, by January 3, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule would add a new section to chapter 230-06 WAC requiring a manufacturer or its designee to submit electronic or mechanical gambling equipment for evaluation during rule making.

Reasons Supporting Proposal: This rule change would allow staff to request and evaluate equipment during the rule-making process. The manufacturer would not be required to submit an application or fees for this evaluation during the rule-making process.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Gambling commission staff, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brian Considine, Legal and Legislative Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3469.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

Proposed Changes to Rules: WAC 230-17-192, submission of electronic or mechanical gambling equipment during rule making.

This new rule requires manufacturers or their designee to submit electronic or mechanical gambling equipment for evaluation during rule making, if the equipment submission is requested by gambling commission staff. The manufacturer would not be required to submit an application or fees for this evaluation during the rule-making process.

Allowing staff to evaluate the gambling equipment during the rule-making process will ensure:

- Staff has a clear understanding of how the equipment works before authorized by rule and implemented;
- Regulatory guidelines can be addressed during the rule-making process; and
- More effective rule making can occur as a result of understanding how the gambling equipment operates.

The evaluation of the equipment may include an understanding of interoperability, communication, security, and player protection issues. The intent is to put rules into place during the rule-making process to set parameters for the authorization of the use of the equipment rather than after new rules are in place and the equipment deployed. Thereby, this process should save stakeholders money by not putting equipment into the marketplace and then having it pulled back because of subsequent changes in rules limiting the operation of the equipment because staff did not know how the equipment worked.

1. Description of the Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule: There are no new reporting or recordkeeping requirements. The new rule solely creates a mechanism to require gambling equipment manufacturers or their designee to submit electronic or mechanical gambling equipment for evaluation during rule making to authorize the use of such gambling equipment.

This new rule is only applicable during rule making to authorize new gambling equipment. The gambling equipment review and approval process set out in WAC 230-06-050 will not be changed.

The manufacturer would be required to submit the following to our office in Lacey, Washington, for inspection within thirty days of our request:

- Gambling equipment, including software, that is identical or substantially similar to what will be marketed, distributed or deployed in the state;
- A copy of detailed technical materials and diagrams associated with the equipment and software, and all of the operational procedures and manuals;
- Other requested technical specifications.

The manufacturer would be responsible for costs associated with the above information and installing, configuring, and supporting the equipment/software to allow us to fully evaluate its operation.

The manufacturer would not be required to submit an application or any fees related to the evaluation during the rule-making process. The agency will assume all evaluation/inspection-related costs.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply: Manufacturers seeking rule making to authorize new gambling equipment through a rule change may need to solicit transportation support to get their proposed gambling equipment to our Lacey office.

No other professional services are needed to comply with this new rule.

3. The Actual Costs to Small Businesses of Compliance, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs: The actual costs cannot be determined because of the following variables:

- Distance of manufacturer seeking a rule change to authorize new gambling equipment (to determine transportation costs). Manufacturer may reside out-of-state; and
- Time to evaluate the new equipment during the rule-making process, including the value of the equipment/software and costs for installation, configuration, and support for the equipment is variable depending on type of equipment and complexity of equipment and software being evaluate [evaluated]. The cost could increase if the manufacturer had to remove equipment from possible sale, rental or lease in another jurisdiction where the equipment is authorized for use.

4. Whether Compliance with the Rule, Based on Feedback Received from Licensees, Will Cause Businesses to Lose Sales or Revenue: No small business should lose sales or revenue because the rule relates to gambling equipment/software not currently authorized under the Gambling Act or by gambling commission rules. A card room licensee testified he feared increased costs to small manufacturers would prevent new gambling equipment coming into the state and being used by card room licensees. The licensee misunderstood that the equipment evaluation under this new rule only applied when a manufacturer is seeking a rule change to authorize the use of the new equipment.

Gambling commission staff explained to the licensee there should be no costs preventing distribution of equipment for currently approved devices and software, and the licensee felt comfortable there would be no additional costs. The

licensee also understood how this new rule would provide more transparency and be more economical for manufacturers. In the past, manufacturers have made financial investments by placing gambling equipment in the state after a rule change to authorize the equipment. Later, further rules had to be implemented, which required costly modifications to the equipment, as staff gained an understanding of how the equipment operated.

This new rule could cause a small business to delay sales or revenue on the one piece of gambling equipment they submit to us for evaluation during the rule-making process. Overall, we anticipate this new rule will save manufacturers from making investments in gambling equipment in the state and then having to change the functionality of the equipment, thereby costing the manufacturers money to make the changes to the equipment and possible loss of revenue, because of future rule changes to how the equipment will operate.

5. A Determination of Whether the Proposed Rule Will Have a Disproportionate Cost Impact on Small Businesses: The cost on small businesses and the cost for the largest ten percent of manufacturers is indeterminate because shipping of the equipment/software and the value of the equipment/software and costs for installation, configuration, and support for the equipment is variable depending on type of equipment and complexity of equipment and software that will be evaluated. However, this rule should not have a disproportionate cost because the cost should be the same because the possible aforementioned costs are equipment/software specific and should not vary between manufacturers.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So. Agencies "must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:"

a. Reducing, modifying, or eliminating substantive regulatory requirements: This rule change does not add any new substantive regulatory requirements to licensees or potential licensees. Instead, it adds a process during the agency's rule-making consideration when it is considering rules authorizing and regulating new gambling equipment and/or software. The agency will incur most of the costs for inspection/evaluation of the gambling equipment and manufacturers will not be required to pay for our inspection/evaluation of the equipment during the rule-making process.

This should reduce manufacturer costs in the long run because staff and commissioners will understand the full functionality of the equipment during the rule-making process and then can ensure that the rules contain all necessary regulatory requirements to ensure effective implementation of the new equipment/software. This should prevent situations that have occurred in the past where equipment has been approved without review by the commission's lab and then additional rules are enacted to address regulatory concerns with how the equipment is being operated after its initial approval.

b. Simplifying, reducing, or eliminating recordkeeping and reporting requirements: This rule change does not

require any additional recordkeeping or reporting requirements.

c. Reducing the frequency of inspections: This rule change will not impact the number of inspections.

d. Delaying compliance timetables: A delay is not necessary because it could provide a financial benefit for manufacturers seeking a rule change to allow the gambling equipment they manufacture in Washington.

e. Reducing or modifying fine schedules for noncompliance; or reduction or modification is unnecessary because there is no fine schedule related to this rule.

f. Any other mitigation techniques including those suggested by small businesses or small business advocates: A mitigation analysis is unnecessary because of the positive impact to manufacturers. We have not received any feedback from stakeholders requesting changes to the proposed rule.

7. A Description of How the Gambling Commission Will Involve Small Businesses in the Development of the Rule: Notice of this rule making followed the gambling commission's standard procedure. It was included in the September 2017 commission materials posted on our web site. On September 15, 2017, staff presented the new rule to the commissioners for discussion and possible filing. The commissioners filed the new rule for further discussion after taking comment from the public.

The new rule was included in the October 2017 commission materials posted on our web site. Prior to the start of the October 2017 commission meeting, we held an informal "Question and Answer" session for stakeholders to ask questions and discuss with staff proposed rules. The new rule was discussed at the commission meeting and the public comment was taken.

In October 2017, we posted the new rule on our agency's web site under "Breaking News." ("Breaking News" is in the middle of our main web site, www.wsgc.wa.gov.)

On October 27, 2017, we sent an email to all licensed manufacturers giving them notice of the new rule and a copy of the proposed rule language.

The new rule will be discussed at future commission meetings until the commissioners take final action, which is anticipated to be at the January 2018 meeting. Public comment is taken at each meeting. The new rule and this small business economic impact statement will be made available on our web site for each commission meeting that the rule will be heard. Lastly, the new rule will remain posted under "Breaking News" on our main web site until the commissioners take final action.

This process provided small businesses several opportunities to provide feedback in the development of the new rule.

8. A List of Industries That Will Be Required to Comply with the Rule: 7132.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule: No jobs will be impacted based on the information provided above.

A copy of the statement may be obtained by contacting Brian Considine, Legal and Legislative Manager, P.O. Box 42400, Olympia, WA 98504-2400, or 4565 7th Avenue S.E.,

Lacey, WA 98503, phone 360-486-3469, fax 360-486-3453,
email brian.considine@wsgc.wa.gov.

December 4, 2017
Brian J. Considine
Legal and Legislative Manager

NEW SECTION

WAC 230-17-192 Rule making that involves new or novel electronic or mechanical gambling equipment. (1) A manufacturer or its designee is required to submit electronic or mechanical gambling equipment for evaluation during rule making when:

(a) The equipment is new or novel in Washington state; and

(b) The commission has taken action to adopt, change, or repeal a rule in order to authorize use of the gambling equipment.

(2) When we are ready to begin our equipment evaluation, we will notify the manufacturer or its designee in writing. The manufacturer or its designee will have thirty days from the date of our written request to submit the requested electronic or mechanical gambling equipment to our headquarters, directly or through a designee, or we may administratively close our review and deny the requested rule change.

(3) Manufacturers or their designee must submit:

(a) The gambling equipment, including all relevant software, that is identical or substantially similar to what will be marketed, distributed, and deployed in Washington;

(b) A copy of detailed technical materials and diagrams associated with the equipment and software, and all of the operational procedures and manuals, including relevant hardware and software manuals; and

(c) Other technical specifications as requested by the commission.

(4) The manufacturer or its designee must install, configure, and support the equipment/software to allow us to fully evaluate its operation. Evaluation may include, but is not limited to, interoperability, communication, security, and player protection issues.

(5) We will notify the manufacturer or their designee in writing if we require additional equipment or information for our evaluation. The manufacturer or its designee must provide us with the requested equipment or information within thirty days from the date of our written request or we may administratively close our review and deny the requested rule change.

WSR 17-24-071
PROPOSED RULES
COMMISSION ON
ASIAN PACIFIC AMERICAN AFFAIRS

[Filed December 4, 2017, 4:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-051.

Title of Rule and Other Identifying Information: WAC 34-04-080 Copying.

Hearing Location(s): On January 20, 2018, at 1:00 p.m., at 16225 N.E. 87th Street, Redmond, WA 98052.

Date of Intended Adoption: January 20, 2018.

Submit Written Comments to: Michael Itti, P.O. Box 40925, Olympia, WA 98504-0925, email michael.itti@capaa.wa.gov, by January 10, 2018.

Assistance for Persons with Disabilities: Contact Michael Itti, phone 360-725-5666, TTY 711, email michael.itti@capaa.wa.gov, by January 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adopt the new fee schedule for public records requests established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017.

Reasons Supporting Proposal: Changes to the Public Records Act during the 2017 legislature require the commission to amend its public records disclosure rules.

Statutory Authority for Adoption: EHB 1595 (chapter 304, Laws of 2017), chapters 42.56 and 43.117 RCW.

Statute Being Implemented: Chapters 42.56 and 43.117 RCW.

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

Name of Proponent: Commission on Asian Pacific American affairs, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael Itti, 210 11th Avenue S.W., Olympia, WA 98504, 360-725-5666.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3).

Explanation of exemptions: The rule content is explicitly and specifically dictated by statute.

December 4, 2017

Michael Itti

Executive Director

AMENDATORY SECTION (Amending WSR 82-20-015, filed 9/28/82)

WAC 34-04-080 ((Copying)) Calculation of actual costs of producing copies of public records declared to be unduly burdensome—Adoption of statutory fee schedule. ~~((No fee shall be charged for the inspection of public records. The commission shall charge a fee of \$.25 per page for providing copies of public records and for use of the commission's copy equipment. This charge is the amount necessary to reimburse the commission for its actual costs incident to such copying.))~~ (1) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the Washington state commission on Asian Pacific American affairs 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 commission on Asian Pacific American affairs 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 17-24-079
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Behavioral Health Administration)
 [Filed December 5, 2017, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-156.

Title of Rule and Other Identifying Information: The department is proposing to create new rules and amend existing rules in chapter 388-877 WAC, repeal chapters 388-810, 388-877A, 388-877B, and 388-877C WAC; and repeal specific sections in chapters 388-865 and 388-877 WAC.

Hearing Location(s): On February 6, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than February 7, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., February 6, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend existing rules and create new rules in chapter 388-877 WAC regarding behavioral health services to provide a single set of regulations for behavioral health agencies to follow in order to provide mental health, substance use disorder, co-occurring, and pathological and problem gambling services. The department is also proposing to repeal chapters 388-810, 388-877A, 388-877B and 388-877C WAC, and repeal specific sections of chapters 388-865 and 388-877 WAC. A crosswalk table of existing and new WAC sections is available upon request.

Reasons Supporting Proposal: The 2017 legislature passed E2SHB 1819 (RCW 71.24.870) which charges DSHS with providing a single set of regulations to follow for behav-

ioral health agencies that provide mental health, substance use disorder, and co-occurring treatment services by April 1, 2018. The division of behavioral health and recovery (DBHR) is performing a review of its rules, policies [policies], and procedures related to the documentation requirements for behavioral health services in order to assess the comprehensive nature of this rule change.

Statutory Authority for Adoption: RCW 71.24.870, 70.02.290, 70.02.340, 71.05.560, 71.24.035, 71.34.380.

Statute Being Implemented: RCW 71.24.870.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dennis Malmer, P.O. Box 45330, Olympia, WA 98504-5330, 360-725-3747.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stephanie Vaughn, DBHR, P.O. Box 45330, Olympia, WA 98504-5330, phone 360-725-1342, fax 360-586-0341, TTY 1-800-833-6384, email stephanie.vaughn@dshs.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Our representative stakeholders have suggested that the implementation of these rules and the intent behind the 2017 bill E2SHB 1819 would result in overall reduced costs. Any costs were determined to be short term, or one-time minor costs.

Initial minor costs for providers were determined to be the following: Development of new policies and procedures, training, and data sets.

Initial minor costs for behavioral health organizations were determined to be the following: Contracting and data sets.

DBHR has plans to help mitigate and alleviate these minor costs by providing a number of services free of charge including training and technical assistance with policies and procedures. DBHR is analyzing the possibility of phasing in the date providers will be required to follow these new rules to further help agencies with the implementation of these rules.

A copy of the detailed cost calculations may be obtained by contacting Stephanie Vaughn, DBHR, P.O. Box 45330, Olympia, WA 98504-5330, phone 360-725-1342, fax 360-586-0341, TTY 1-800-833-6384, email Stephanie.vaughn@dshs.wa.gov.

November 30, 2017
 Katherine I. Vasquez
 Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-02 issue of the Register.

WSR 17-24-080
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 5, 2017, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-19-086.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-310-0300 WorkFirst—Infant care exemptions for mandatory participants, 388-310-0400 WorkFirst—Entering the WorkFirst program as a mandatory participant, and 388-310-1450 Pregnancy to employment.

Hearing Location(s): On January 9, 2018, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than January 10, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., January 9, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by December 26, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Existing language in WAC 388-310-0300, 388-310-0400, and 388-310-1450 states that the infant exemption is available for up to twelve months in a lifetime for families with a child under one year old. The department is proposing to amend these sections in order to implement an extension of the lifetime limit to twenty-four months for families with a child under two years old.

Reasons Supporting Proposal: ESSB 5898 passed the legislature amending RCW 74.08A.260 and 74.08A.270, extending the lifetime limit for the workfirst infant exemption to twenty-four months for families with a child under the age of two years old.

Statutory Authority for Adoption: RCW 74.08A.270, 74.04.050, 74.04.057, 74.08.090, 74.04.055, and chapter 74.12 RCW.

Statute Being Implemented: RCW 74.08A.260 and 74.08A.270.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Angela Aikins, P.O. Box 45470, Olympia, WA 98504, 360-725-4784.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under

RCW 34.05.328 (5)(b)(iii) which states in part "This section does not apply to ... rules adopting or incorporating by reference without material change ... Washington state statutes.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

November 30, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-09-037, filed 4/9/15, effective 5/10/15)

WAC 388-310-0300 WorkFirst—Infant care exemptions for mandatory participants. (1) When ~~((can))~~ may I be exempted from participating in WorkFirst activities if I am a mandatory participant?

Either you or the other parent ~~((t))~~, living in the household ~~((can))~~, may claim an infant exemption from participating in WorkFirst activities provided you:

(a) Have a child under ~~((one year))~~ two years of age;

(b) Choose to not fully participate in the WorkFirst program (see WAC 388-310-0400); and

(c) Have not used up your lifetime ~~((twelve month))~~ twenty-four month infant exemption.

(2) If I choose my infant exemption, ~~((can))~~ may I still be required to participate in the WorkFirst program?

You are required to participate up to twenty hours per week in parenting education ~~((or parent))~~, parenting skills training, mental health ~~((and/or))~~ treatment, chemical dependency treatment, or any combination of these, if:

(a) The comprehensive evaluation or assessment indicates a need; and

(b) Services are available in your community.

(3) ~~((Can))~~ May I volunteer to participate in WorkFirst while I have a child under ~~((one))~~ two years of age?

You may choose to fully participate in WorkFirst (see WAC 388-310-0400) while you have a child under ~~((one year))~~ two years of age. If you decide later to stop participating and you still qualify for an exemption, you will ~~((be put back into))~~ return to exempt status with no financial penalty provided you meet the conditions of subsections (1) and (2) ~~((above))~~ of this section.

(4) Does an infant exemption from participation affect my sixty-month time limit for receiving temporary assistance for needy families (TANF) or state family assistance (SFA) benefits?

Even if you are exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit (see WAC 388-484-0005).

AMENDATORY SECTION (Amending WSR 10-22-062, filed 10/29/10, effective 12/1/10)

WAC 388-310-0400 WorkFirst—Entering the WorkFirst program as a mandatory participant. (1)

What happens when I enter the WorkFirst program as a mandatory participant?

~~((If you are a mandatory participant,))~~ You must follow instructions as written in your individual responsibility plan ~~((see))~~ (IRP) as required under WAC 388-310-0500~~((,))~~, which is written after you have participated in a comprehensive evaluation of elements related to your employability. If you have been identified as someone who needs necessary supplemental accommodation (NSA) services ~~((f))~~ as defined in chapter 388-472 WAC~~((,))~~, your ~~((ease manager))~~ WorkFirst worker will first develop an accommodation plan to help you access WorkFirst services. The ~~((ease manager))~~ WorkFirst worker will use the accommodation plan to help develop your IRP with you. If you have been identified as a victim of family violence ~~((f))~~ as defined in WAC 388-61-001~~((,))~~, you and your ~~((ease manager))~~ WorkFirst worker will develop an IRP to help you with your situation, including referrals to appropriate services.

~~((If you are a mandatory participant,))~~ Your ~~((ease manager))~~ WorkFirst worker will refer you to WorkFirst activities unless any of the following applies to you:

(a) You work thirty-two or more hours a week (or, if you are a member of a two-parent family, you work thirty-five hours or more a week). "Work" means to engage in any legal, income generating activity ~~((which))~~ that is taxable under the United States tax code or ~~((which))~~ would be taxable with or without a treaty between an Indian nation and the United States;

(b) You participate the equivalent of twenty or more hours a week (or if you are a member of a two-parent family, you participate the equivalent of thirty or more hours a week) in job search, vocational education, issue resolution, or paid or unpaid work that meets the federal definition of core activities, which may include work of sixteen or more hours a week in the federal or state work study program, and you attend a Washington state community or technical college at least half time;

(c) You work twenty or more hours a week (or if you are a member of a two-parent family, you work thirty or more hours a week) in unsubsidized employment and attend a Washington state community or technical college at least half time;

(d) You are under the age of eighteen, have not completed high school, GED, or its equivalent and are in school full time;

(e) You are eighteen or nineteen years of age and are attending high school or an equivalent full time;

(f) You are pregnant or have a child under the age of ~~((twelve months))~~ two years old, and are participating in other pregnancy to employment activities ~~((-See))~~ as defined in WAC 388-310-1450;

(g) Your situation prevents you from looking for a job and you are conducting activities identified on your IRP to help you with your situation~~((-))~~ (for example, you may be unable to look for a job while you have health problems or you are homeless); or

(h) Your situation prevents you from looking for work because you are a victim of family violence and you are conducting activities on your IRP to help you with your situation.

(2) How will I know what my participation requirements are?

(a) Your ~~((individual responsibility plan))~~ IRP will describe what you need to do to be able to enter job search or other WorkFirst activities and then find a job ~~((see))~~ as described in WAC 388-310-0500 and 388-310-0700~~((,))~~.

(b) If you enter the pregnancy to employment pathway ~~((f))~~ as described in WAC 388-310-1450~~((3))~~~~((,))~~, you must take part in an assessment.

(3) What happens if I do not follow my WorkFirst requirements?

If you do not participate in creating an ~~((individual responsibility plan))~~ IRP, job search, or in the activities listed in your ~~((individual responsibility plan))~~ IRP, and you do not have a good reason, the department will follow the sanction rules in WAC 388-310-1600.

AMENDATORY SECTION (Amending WSR 15-09-037, filed 4/9/15, effective 5/10/15)

WAC 388-310-1450 Pregnancy to employment. (1) How do I know if I am eligible to participate in pregnancy to employment?

If you are on ~~((TANF/SFA))~~ temporary assistance for needy families (TANF) or state family assistance (SFA) and are pregnant or have a child under the age of ~~((one year))~~ two years, you are a participant in the pregnancy to employment pathway.

(2) What services are provided to the pregnancy to employment pathway?

(a) The pregnancy to employment pathway provides you with services, when available in your community, to help you learn how to work, look for work, or prepare for work while still meeting your child's needs. You and your ~~((ease manager or social))~~ WorkFirst worker will decide which variety of services you need, such as:

- (i) Parenting education or parenting skills training;
- (ii) Safe and appropriate child care;
- (iii) Mental health treatment;
- (iv) Chemical dependency treatment;
- (v) Domestic violence services; or
- (vi) Employment services.

(b) The ~~((ease manager or social))~~ WorkFirst worker will contact you every three months to offer you services if you are not required to participate and choose to claim the infant exemption.

(3) What am I required to do while I am in the pregnancy to employment pathway?

You must participate in an assessment with a DSHS social ~~((worker))~~ service specialist and based on the results you will:

(a) Work with your ~~((ease manager/social))~~ WorkFirst worker to decide which required activities best meet your needs~~((-))~~ (these activities will depend on where you are in the pregnancy or the age of your child and will be added to your individual responsibility plan (IRP)~~((-))~~); and

(b) Be required to participate in the activities identified in your IRP.

(4) What am I required to do while I am pregnant?

Based upon the results of your assessment, your participation:

(a) During your first and second trimester of pregnancy will be full-time work, looking for work, or preparing for work unless you have a good reason to participate fewer hours ~~((see)) as described under~~ WAC 388-310-1600~~((3))~~.

(b) During your third trimester of pregnancy will be up to twenty hours per week in parenting education ~~((or))~~, parenting skills training, mental health ~~((and/or))~~ treatment, chemical dependency treatment, or any combination of these, if:

(i) The comprehensive evaluation or assessment indicates a need; and

(ii) Services are available in your community.

(5) What am I required to do after my child is born?

After the birth of your child, you may choose to take the infant exemption ~~((See)) under~~ WAC 388-310-0300~~((3))~~ or volunteer to participate in WorkFirst activities to the fullest of your abilities ~~((see)) under~~ WAC 388-310-0400~~((3))~~.

(6) What if I have used my ~~((twelve-month))~~ twenty-four month lifetime infant exemption?

If you have another child after using all ~~((twelve))~~ twenty-four months of the infant exemption, you will be:

(a) Eligible for a twelve-week postpartum deferral period to personally take care of an infant less than twelve weeks of age ~~((During the twelve-week postpartum deferral period, you))~~ but will be required to participate up to twenty hours per week in parenting education, parenting skills training, mental health ~~((and/or))~~ treatment, chemical dependency treatment, or any combination of these, if the comprehensive evaluation or assessment indicates a need and services are available in your community.

(b) Required ~~((unless otherwise exempt or you have good reason to participate fewer hours))~~ to participate full time, unless otherwise exempt or you have good reason to participate fewer hours, once your child turns twelve ~~((weeks old (-Activities)) in ((which you are required to participate include))~~ one or more of the following activities:

(i) Work;

(ii) Looking for work; ~~((or))~~

(iii) Preparing for work by participating in a combination of activities based upon the results of your assessment.

(7) Will I be sanctioned if I refuse to participate?

(a) You are required to participate in the WorkFirst program ~~((see)) under~~ WAC 388-310-0200~~((3))~~ subject to sanction ~~((see)) under~~ WAC 388-310-1600~~((3))~~ unless you have good reason and you:

(i) Are in your third trimester of pregnancy; ~~((or))~~

(ii) Have not used up your ~~((twelve-month))~~ twenty-four month lifetime infant exemption and have a child under the age of ~~((one-year))~~ two years old; or

(iii) Have used up your ~~((twelve-month))~~ twenty-four month lifetime infant exemption and have a child under twelve weeks.

(b) You may be sanctioned if you stop participating in required parenting education ~~((or))~~, parenting skills training, mental health ~~((and/or))~~ or chemical dependency treatment ~~((even if))~~ when you are in your third trimester, claiming the infant exemption, or using a twelve-week postpartum deferral period.

WSR 17-24-081

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed December 5, 2017, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-103.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-06A-0110 Who must have background checks?

Hearing Location(s): On January 9, 2018, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than January 10, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., January 9, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by December 26, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-06A-0110 Who must have background checks?, to align with changes to RCW 74.15.030 and 43.43.832, which allow[s] the department to complete background checks on individuals younger than sixteen years old when it is warranted to ensure the safety of children in foster care. Additional edits are being made to clarify the language.

Reasons Supporting Proposal: To ensure these WAC sections align with RCW 74.15.030 and 43.43.832.

Statutory Authority for Adoption: RCW 74.15.030, 43.43.832.

Statute Being Implemented: RCW 74.15.030, 43.43.832.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Chris Parvin, P.O. Box 45710, Olympia, WA 98504, 360-407-55011 [360-407-5501].

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(iii) which states in part "This section does not apply to ... rules adopting or incorporating by reference without material change ... Washington state statutes.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

November 30, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-071, filed 1/15/15, effective 2/15/15)

WAC 388-06A-0110 Who must have background checks? (1) (~~(Per)~~) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) (~~(Per)~~) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes, or facilities (~~(which)~~) that provide care. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children(~~(s)~~).

(b) Any person who regularly has unsupervised access to a child. However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, (~~(per)~~) as stated in RCW 74.13.710(~~(s)~~).

(c) A relative other than a parent who may be caring for a child(~~(s) and~~).

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care. The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.

(3) (~~(Per)~~) Under RCW 13.34.138, prior to returning a dependent child home, the department requires a background check on all adults residing in the home.

WSR 17-24-082

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed December 5, 2017, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-014 and 17-05-062.

Title of Rule and Other Identifying Information: Chapter 182-516 WAC, Trusts, annuities, and life estates—Effects on medical program, and 182-513-1367 Hardship waivers.

Hearing Location(s): On January 9, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than January 10, 2018.

Submit Written Comments to: Wendy Barcus, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 9, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by January 6, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 182-516 WAC is being revised to align state policy with federal law. The agency added language from Section 1917 of the Social Security Act and other sources regarding life estates, promissory notes, loans, trusts, and annuities. The agency is also amending this chapter because Title V, Sec. 5007 the 21st Century Cures Act allows for a person to create his or her own D4A special needs trust. WAC 182-513-1367 Hardship waivers, is being revised because it overlaps with chapter 182-516 WAC as hardship waivers can be used for trusts, annuities, and life states [estates].

Reasons Supporting Proposal: This rule making was done to streamline and clarify language; reconcile self-settled and third party trusts; provide more direction on third party trusts; better distinguish annuities as resources, income, and/or transfers; simplify language for readers who do not have inherent property law knowledge; and add information from the Social Security Administration's Program Operations Manual System.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, Sec. 1917 of the Social Security Act (42 U.S.C. 1396p) and Title V - Savings, Sec. 5007 Fairness in Medicaid supplemental needs trusts 21st Century Cures Act.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1348; Implementation and Enforcement: Stephen Kozak, P.O. Box 4553 [45534], Olympia, WA 98504-55344 [98504-5534], 360-725-1343.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: These revisions do not affect small businesses. There are no costs to businesses as a result of this rule making. The only potential cost impact would be to medicaid clients who do not meet requirements for an undue hardship waiver, or clients who do not provide the information needed to obtain an undue hardship waiver. Most clients will not incur costs. The rule does not impose costs on businesses.

December 5, 2017
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1367 Hardship waivers. (1) ~~((People who are denied or terminated from))~~ This section defines undue hardship for long-term services and supports (LTSS) ((due to a transfer of asset penalty under WAC 182-513-1363, or having excess home equity under WAC 182-513-1350 may apply for an undue hardship waiver. The agency or its designee gives notice of the right to apply for an undue hardship waiver whenever there is a denial or termination based on an asset transfer or excess home equity. This section:

- (a) Defines undue hardship;
- (b) Specifies the approval criteria for an undue hardship request;
- (c) Establishes the process the agency or its designee follows for determining undue hardship; and
- (d) Establishes the appeal process for a client whose request for an undue hardship is denied)) and specifies the request, approval, denial, and other processes for hardship waivers.

(2) Undue hardship ((exists:

~~(a) When a person who transferred the assets or income, or on whose behalf the assets or income were transferred, either personally or through a spouse, guardian, or another person authorized to act on behalf of the person through a power of attorney document (attorney in fact), has exhausted all reasonable means including legal remedies to recover the assets or income or the value of the transferred assets or income that have caused a penalty period the person provides sufficient documentation to support the efforts to recover the assets or income; or~~

~~(b) The person is unable to access home equity in excess of the standard under WAC 182-513-1350; and~~

~~(c) When,);~~

~~(a) Undue hardship exists when, without LTSS benefits, the ((person)) client is unable to obtain:~~

- ~~(i) Medical care to the extent that health or life is endangered; or~~
- ~~(ii) Food, clothing, shelter or other basic necessities of life.~~

~~((3) Undue hardship can be approved for an interim period while the client is pursuing recovery of the assets or income.~~

~~(4)) (b) Undue hardship does not exist when:~~

~~((a) When the transfer of asset penalty period or excess home equity provision)) (i) The denial or termination of~~

~~LTSS inconveniences ((a person)) the client or restricts the ((person's)) client's lifestyle but does not seriously deprive the ((person as defined in subsection (2)(e)(i) and (ii) of this section;~~

~~(b) When the resource is transferred to a person who is handling the financial affairs of the person; or~~

~~(c) When the resource is transferred to another person by the individual that handles the financial affairs of the person.~~

~~(5) Undue hardship may exist under subsection (4)(b) and (c) of this section if the department has found evidence of financial exploitation.~~

~~(6) An undue)) client of the items described under (a) of this subsection;~~

~~(ii) The denial or termination of LTSS is because of a period of ineligibility under WAC 182-513-1363, and the asset was transferred by a person or entity handling the financial affairs of the client denied or terminated from LTSS, unless the department has found evidence of financial exploitation; or~~

~~(iii) The client's situation meets undue hardship under (a) of this subsection because of restrictions placed in a trust by that client, either personally or through a spouse, guardian, court, or another person authorized to act on behalf of that client through a power of attorney document (attorney-in-fact).~~

~~(3) A hardship waiver may be requested when a client is denied or terminated from LTSS under the following scenarios:~~

~~(a) A period of ineligibility under WAC 182-513-1363 was established for a client, and that client, who transferred the assets, or on whose behalf the assets were transferred, either personally or through a spouse, guardian, or another person authorized to act on behalf of that client through a power of attorney document (attorney-in-fact), has exhausted all reasonable means including legal remedies to recover the assets or the value of the transferred assets that caused the period of ineligibility;~~

~~(b) A client was denied or terminated from LTSS due to exceeding the home equity standard under WAC 182-513-1350, and the client cannot legally access the excess equity; or~~

~~(c) The client was denied or terminated from LTSS due to the application of rules regarding trusts under chapter 182-516 WAC, except that if the application of rules regarding trusts under chapter 182-516 WAC results in a period of ineligibility under WAC 182-513-1363, then (a) of this subsection applies instead of (c) of this subsection.~~

~~(4) Process to request a hardship waiver.~~

~~(a) A hardship waiver may be requested by:~~

~~((a)) (i) The ((person)) client;~~

~~((b)) (ii) The ((person's)) client's spouse;~~

~~((c)) (iii) The ((person's)) client's authorized representative; or~~

~~((d)) (iv) With the consent of the ((person, the person's guardian, or)) client, a representative of the medical institution((, as defined in WAC 182-500-0050,)) in which ((an institutionalized person)) the client resides.~~

~~((7)) (b) The hardship waiver request must:~~

~~((a)) (i) Be in writing;~~

~~((b)) (ii) State the reason for requesting the hardship waiver;~~

~~((e))~~ (iii) Be signed by the requestor and include the requestor's name, address, and telephone number. If the request is being made on behalf of a ~~((person))~~ client, then ~~((the person's))~~ that client's name, address, and telephone number must be included;

~~((d))~~ (iv) Be made within thirty days of the date of denial or termination of LTSS; and

~~((e))~~ (v) Returned to the originating address on the ~~((denial/termination))~~ denial or termination letter.

~~((8))~~ (c) If additional information is needed to determine whether or not to approve a hardship waiver, then, within fifteen days of receipt of the request for the hardship waiver, the agency or ~~((its))~~ the agency's designee sends the client a written notice ~~((to the person))~~ requesting additional information ~~((within fifteen days of the request for an undue hardship waiver. The person may request additional time to provide the information.~~

~~((9))~~ under WAC 182-503-0050.

(5) Standards to approve a hardship waiver request.

(a) Period of ineligibility: If a client was denied or terminated from LTSS under WAC 182-513-1363 (the scenario described in subsection (3)(a) of this section) and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(b) Excess home equity: If a client was denied or terminated from LTSS under WAC 182-513-1350 (the scenario described in subsection (3)(b) of this section) and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(c) Trusts.

(i) The client's home is in a revocable trust: If a client was denied or terminated from LTSS under chapter 182-516 WAC (the scenario described in subsection (3)(c) of this section), then the agency or the agency's designee approves a hardship waiver for up to ninety days if the following conditions are met:

(A) The client is an institutionalized individual;

(B) The home would otherwise meet the exclusion criteria in WAC 182-512-0350 (1)(b), but it is in a revocable trust; and

(C) The client must submit in writing to the agency or the agency's designee that, in order to exclude the home under WAC 182-512-0350 (1)(b), the home will be retitled out of the revocable trust to the client, the client's spouse, or both, within ninety days.

(ii) All other denials or terminations of LTSS due to trusts: If a client was denied or terminated from LTSS under subsection (3)(c) of this section, and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(6) If the hardship is approved:

(a) The agency or the agency's designee sends a notice within fifteen days of receiving all information needed to ~~((determine a))~~ approve the hardship waiver. The hardship waiver approval notice specifies a time period for which the undue hardship waiver is approved.

(b) Any changes in a ~~((person's))~~ client's situation that led to the approval of a hardship wave must be reported to

the agency or ~~((its))~~ the agency's designee within thirty days of the change per WAC 182-504-0110.

~~((10))~~ (c) If the hardship waiver is approved under subsection (5)(c)(i) of this section, the client must provide verification by the ninetieth day after the hardship waiver approval that the home has been retitled out of the revocable trust to the client, the client's spouse, or both.

(7) If the hardship waiver is denied:

(a) The agency or ~~((its))~~ the agency's designee sends a denial notice within fifteen days of receiving the ~~((requested))~~ hardship waiver request or the request for additional information. The ~~((letter))~~ notice will state the reason ~~((#))~~ why the hardship waiver was not approved.

(b) The denial notice has instructions on how to request an administrative hearing. The agency or ~~((its))~~ the agency's designee must receive an administrative hearing request within ninety days of the date of the adverse action ~~((# denial.~~

~~((11))~~ If there is a conflict between this section and chapter 182-526 WAC, this section prevails).

~~((12))~~ (8) The agency or ~~((its))~~ the agency's designee may revoke approval of an undue hardship waiver if any of the following occur:

(a) A ~~((person))~~ client, or the ~~((person's))~~ client's authorized representative, fails to provide timely information or resource verifications as it applies to the hardship waiver when requested by the agency or ~~((its))~~ the agency's designee per WAC 182-503-0050 and 182-504-0105;

(b) The lien or legal impediment that restricted access to home equity in excess of the home equity limit is removed; or

(c) Circumstances for which the undue hardship was approved have changed.

(9) If there is a conflict between this section and chapter 182-526 WAC, this section prevails.

Chapter 182-516 WAC

TRUSTS, ANNUITIES, ~~((AND))~~ LIFE ESTATES, AND PROMISSORY NOTES—EFFECT ON MEDICAL PROGRAMS

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0001 Definitions. "Acquire" means, in the context of trusts, to gain title to, or to gain ownership interest in an asset in a trust. Receiving payment or benefit from an asset in a trust is not acquiring the asset.

"Annuitant" means a person or entity that receives the ~~((income))~~ stream of payments from an annuity.

"Annuity" means a policy, certificate, or contract that is an agreement between two parties in which one party pays a lump sum to the other, and the other party agrees to guarantee payment of a set amount of money over a set amount of time. ~~((The annuity may be purchased at one time or over a set period of time and may be bought individually or with a group. It may be revocable or irrevocable. The party guaranteeing payment can be an:~~

(1) Individual; or

(2) Insurer or similar body licensed and approved to do business in the jurisdiction in which the annuity is established.

"Beneficiary" means an individual(s) designated in the trust who benefits from the trust. The beneficiary can also be called the grantee. The beneficiary and the grantor may be the same person.

"Designated for medical expenses" means the trustee may use the trust to pay the medical expenses of the beneficiary. The amount of the trust that is designated for medical expenses is considered an available resource to the beneficiary. Payments are a third party resource.

"Disbursement" or **"distribution"** means any payment from the principal or proceeds of a trust, annuity, or life estate to the beneficiary or to someone on their behalf.

"Discretion of the trustee" means the trustee may decide what portion (up to the entire amount) of the principal of the trust will be made available to the beneficiary.

"Exculpatory clause" means there is some language in the trust that legally limits the authority of the trustee to distribute funds from a trust if the distribution would jeopardize eligibility for government programs including medicaid.

"For the sole benefit of" means that for a transfer to a spouse, blind or disabled child, or disabled individual, the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary.

"Grantor" means an individual who uses his assets or funds to create a trust. The grantor may also be the beneficiary.

"Income beneficiary" means the person receiving the payments may only get the proceeds of the trust. The principal is not available for disbursements. If this term is used, the principal of the trust is an unavailable resource.

"Irrevocable" means the legal instrument cannot be changed or terminated in any way by anyone.

"Life estate" means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

"Principal" means the assets that make up the entity. The principal includes income earned on the principal that has not been distributed. The principal is also called the corpus.

"Proceeds" means the income earned on the principal. It is usually interest, dividends, or rent. When the proceeds are not distributed, they become part of the principal.

"Pooled trust" means a trust meeting all of the following conditions:

- (1) It contains funds of more than one disabled individual, combined for investment and management purposes;
- (2) It is for the sole benefit of disabled individuals (as determined by SSA criteria);

(3) It was created by the disabled individuals, their parents, grandparents, legal guardians, or by a court;

(4) It is managed by a nonprofit association with a separate account maintained for each beneficiary; and

(5) It contains a provision that upon the death of the individual, for any funds not retained by the trust, the state will receive all amounts remaining in the individual's separate account up to the total amount of medicaid paid on behalf of that individual.

"Revocable" means the legal instrument can be changed or terminated by the grantor, or by petitioning the court. A legal instrument that is called irrevocable, but that can be terminated if some action is taken, is revocable for the purposes of this section.

"Sole benefit trust" means an irrevocable trust established for the sole benefit of a spouse, blind or disabled child, or disabled individual. In a sole benefit trust no one but the individual named in the trust receives benefit from the trust in any way either at the time the trust is established or at any time during the life of the primary beneficiary. A sole benefit trust may allow for reasonable costs to trustees for management of the trust and reasonable costs for investment of trust funds.

"Special needs trust" means an irrevocable trust meeting all of the following conditions:

(1) It is for the sole benefit of a disabled individual (as determined by SSA criteria) under sixty-five years old;

(2) It was created by the individual's parent, grandparent, legal guardian, or by a court; and

(3) It contains a provision that upon the death of the individual, the state will receive the amounts remaining in the trust up to the total amount of medicaid paid on behalf of the individual.

"Testamentary trust" means a trust created by a will from the estate of a deceased person. The trust is paid out according to the will.

"Trust" means property (such as a home, cash, stocks, or other assets) is transferred to a trustee for the benefit of the grantor or another party. The department includes in this definition any other legal instrument similar to a trust. For annuities, refer to WAC 388-561-0200.

"Trustee" means an individual, bank, insurance company or any other entity that manages and administers the trust for the beneficiary.

"Undue hardship" means the client would be unable to meet shelter, food, clothing, and health care needs if the department applied the transfer of assets penalty.)

"Beneficiary" means, in the context of a trust, a person or entity that is entitled to benefit from a trust.

"Grantor" means the person or entity who owned the asset immediately before establishing a trust with that asset.

"Immediate" means, in the context of annuities, an annuity that is fully funded at purchase with no accumulation or deferral to allow accumulation.

"Income" means, in the context of a trust, the undistributed proceeds that a trust principal generates over a period including, but not limited to, interest, dividends, rents and realized gains on the sale or exchange. Any income not disbursed in one period is principal the next period.

"Irrevocable":

(a) For a trust, "irrevocable" means the grantor or someone acting on behalf of the grantor cannot reacquire any portion of the assets in the trust for the benefit of the grantor or unilaterally change the terms of the trust; and the beneficiary or someone acting on behalf of the beneficiary cannot acquire any portion of the assets in the trust for the benefit of the beneficiary or unilaterally change the terms of the trust. A legal instrument that is called irrevocable, but permits acquisition or reacquisition of any portion of the assets if some action is taken by or on behalf of the grantor or the beneficiary, is revocable for the purposes of this chapter.

(b) A trust or annuity that is not irrevocable is revocable.

(c) A trust is still irrevocable if it meets the definition under (a) of this definition, but allows modifications to the trust to conform with changes in trust law, which occur after the establishment of the trust.

(d) For an annuity, "irrevocable" means the contract cannot be canceled and the terms of the contract cannot be changed.

"Principal" means the assets, other than income, that make up the trust, promissory note, or loan.

"Revocable" means the instrument is not irrevocable. See the definition of "irrevocable."

"Self-settled trust" means any trust established with assets that were originally owned by the beneficiary, or would have been owned by the beneficiary if they had not been diverted into the trust by the beneficiary, the court, or someone acting on the beneficiary's behalf. Depending on the date a trust is established, a trust may be self-settled if the assets were originally owned by the beneficiary's spouse, or would have been owned by the beneficiary's spouse if they had not been diverted into the trust by the beneficiary's spouse, the court, or someone acting on the beneficiary's spouse's behalf.

"Sole benefit" of a beneficiary means a trust benefits no one but that beneficiary, whether at the time the trust is established or at any time during the lifetime of the beneficiary.

"Third-party trust" means a trust established with assets originally owned by someone other than the beneficiary. However, depending on the date a trust is established, a trust may be self-settled if the assets were originally owned by the beneficiary's spouse, or would have been owned by the beneficiary's spouse if they had not been diverted into the trust by the beneficiary's spouse, the court, or someone acting on the beneficiary's spouse's behalf.

"To or for the benefit of" means that a payment or benefit of any sort from a trust is transferred to the beneficiary, another person, or entity such that the beneficiary derives some benefit from the transfer.

"Trust" means:

(a) Any arrangement in which a grantor transfers property to a trustee with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or another beneficiary; or

(b) Any legal instrument, device, or arrangement similar to a trust in which:

(i) A grantor transfers an asset to another; and

(ii) The grantor transfers the asset intending that it be held, managed, or administered for the benefit of the grantor or another beneficiary.

"Trustee" means a person or entity that manages and administers a trust for the beneficiary.

"Uncompensated asset transfer" means the entirety of the fair market value of the asset transferred was uncompensated, regardless of any consideration received in return for the asset.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0100 Trust((s)) index. ~~((1)) The department determines how trusts affect eligibility for medical programs:~~

~~(2) The department disregards trusts established, on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the mentally retarded (ICMR):~~

~~(3) For trusts established on or before August 10, 1993 the department counts the following:~~

~~(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms of the trust is considered available income to the client if all of the following conditions apply:~~

~~(i) The client could be the beneficiary of all or part of the payments from the trust;~~

~~(ii) The distribution of payments is determined by one or more of the trustees; and~~

~~(iii) The trustees are allowed discretion in distributing payments to the client.~~

~~(b) If an irrevocable trust doesn't meet the conditions under subsection (3)(a) then it is considered either:~~

~~(i) An **unavailable** resource, if the client established the trust for a beneficiary other than the client or the client's spouse; or~~

~~(ii) An **available** resource in the amount of the trust's assets that:~~

~~(A) The client could access; or~~

~~(B) The trustee distributes as actual payments to the client and the department applies the transfer of assets rules of WAC 388-513-1363, 388-513-1364 or 388-513-1365.~~

~~(c) If a revocable trust doesn't meet the description under subsection (3)(a):~~

~~(i) The full amount of the trust is an available resource of the client if the trust was established by:~~

~~(A) The client;~~

~~(B) The client's spouse, and the client lived with the spouse; or~~

~~(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust:~~

~~(ii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:~~

~~(A) The client's spouse, and the client did not live with the spouse; or~~

~~(B) A person other than the client or the client's spouse; and~~

~~(C) Payments were distributed by a trustee of the trust.~~

(iii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under subsection (4)(a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under subsection (4)(d)(ii), are considered a transfer of client assets.

(e) For an irrevocable trust established as described under subsection (4)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(5) For trusts established on or after August 1, 2003:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client or the client's spouse;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed other than by will to the trust by either the client or the client's spouse are available to the client or the client's spouse when part of the trust assets were contributed by persons other than the client or the client's spouse.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of the distributions from the trust.

(d) For a revocable trust established as described under subsection (5)(a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under subsection (5)(d)(ii), are considered a transfer of client assets.

(e) For an irrevocable trust established as described under subsection (5)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client or the client's spouse is an available resource. When payment is made from such irrevocable trusts, the department will consider the payment as:

(A) Income to the client or the client's spouse when payment is to or for the benefit of either the client or the client's spouse; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the benefit of the client or the client's spouse;

(ii) A trust from which a payment cannot be made to or for the benefit of the client or client's spouse is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client or client's spouse is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(6) Trusts established on or after August 11, 1993 are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC 388-475-0050) and the trust:

(i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

~~(ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of medicaid spent on the client's behalf; or~~

~~(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC 388-475-0050), and the trust meets the following criteria:~~

~~(i) It is irrevocable;~~

~~(ii) It is established and managed by a nonprofit association;~~

~~(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;~~

~~(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;~~

~~(v) Accounts in the trust are established by:~~

~~(A) The individual;~~

~~(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;~~

~~(C) The individual's parent, grandparent, legal guardian;~~

~~(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or~~

~~(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.~~

~~(vi) It stipulates that either:~~

~~(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of medicaid spent on the client's behalf; or~~

~~(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.~~

~~(7) Trusts established on or after August 1, 2003 are not considered available resources if they contain the assets of either:~~

~~(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC 388-475-0050) and the trust:~~

~~(i) Is irrevocable;~~

~~(ii) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and~~

~~(iii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or~~

~~(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC 388-475-0050), and the trust meets the following criteria:~~

~~(i) It is irrevocable;~~

~~(ii) It is established and managed by a nonprofit association;~~

~~(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;~~

~~(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;~~

~~(v) Accounts in the trust are established by:~~

~~(A) The individual;~~

~~(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;~~

~~(C) The individual's parent, grandparent, legal guardian;~~

~~(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or~~

~~(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.~~

~~(vi) It stipulates that either:~~

~~(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or~~

~~(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.~~

~~(8) Trusts described in subsection (6)(a) and (7)(a) continue to be considered an unavailable resource even after the individual becomes age sixty-five. However, additional transfers made to the trust after the individual reaches age sixty-five would be considered an available resource and would be subject to a transfer penalty.~~

~~(9) The department does not apply a penalty period to transfers into a trust described in subsections (6)(b) and (7)(b) if the trust is established for the benefit of a disabled individual under age sixty-five as described in WAC 388-513-1363 and 388-513-1364 and the transfer is made to the trust before the individual reaches age sixty-five.~~

~~(10) The department considers any payment from a trust to the client to be unearned income. Except for trusts described in subsection (6), the department considers any payment to or for the benefit of either the client or client's spouse as described in subsections (4)(c) and (5)(c) to be unearned income.~~

~~(11) The department will only count income received by the client from trusts and not the principal, if:~~

~~(a) The beneficiary has no control over the trust; and~~

~~(b) It was established with funds of someone other than the client, spouse or legally responsible person.~~

~~(12) This section does not apply when a client establishes that undue hardship exists.~~

~~(13) WAC 388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366 apply under this section when the department determines that a trust or a portion of a trust is a transfer of assets.) The medicaid agency or its designee applies the following rules to determine how trusts affect eligibility for medicaid:~~

~~(1) WAC 182-516-0105 General rules that apply to all trusts.~~

~~(2) WAC 182-516-0110 Self-settled trusts overview.~~

~~(3) WAC 182-516-0115 Revocable self-settled trusts established on or after August 11, 1993.~~

~~(4) WAC 182-516-0120 Irrevocable self-settled trusts for a disabled client under age sixty-five established on or after August 11, 1993.~~

~~(5) WAC 182-516-0125 Irrevocable pooled self-settled trusts for a disabled client established on or after August 11, 1993.~~

(6) WAC 182-516-0130 Irrevocable self-settled trusts established on or after August 11, 1993.

(7) WAC 182-516-0135 Self-settled trusts established before August 11, 1993.

(8) WAC 182-516-0140 Third-party trusts.

(9) WAC 182-516-0145 Trusts containing both assets of the beneficiary and third-party assets.

NEW SECTION

WAC 182-516-0105 General rules that apply to all trusts. (1) Regardless of treatment under this chapter, all trusts remain subject to Title 182 WAC, which include income and resource rules under chapter 182-512 WAC and asset transfer rules under WAC 182-513-1363, unless specified otherwise.

(2) The medicaid agency or its designee treats the trust or a distribution from the trust as a third-party resource under WAC 182-501-0200 if:

(a) The agency or its designee determines the trust is not an available resource or determines the distributions from a trust are not income; and

(b) The terms of the trust or how the trust is being administered meet the third-party resource rules under WAC 182-501-0200.

(3) The agency or its designee applies the rules under WAC 182-516-0100 to both the language of the trust and how the trust is being administered.

(4) Assets in a trust are available resources to the beneficiary if the beneficiary:

(a) Is a trustee; or

(b) Can direct the use of the trust principal or income, or direct the trustee's use of trust principal or income, for that beneficiary's support and maintenance under the terms of the trust.

(5) Cash distributions from a trust to the beneficiary are unearned income to the beneficiary in the month they are received or should have been received under the trust's terms.

(6) For asset transfer dates for trusts, the transfer date of an asset under WAC 182-513-1363 is the latest of:

(a) The date the trust was established;

(b) The date the asset being evaluated was transferred into the trust; or

(c) The date access to the asset was foreclosed by any action, inaction, or language in the trust, which prevents the beneficiary from accessing the asset.

(7) A client who is denied or terminated from medicaid due to the application of any rules under WAC 182-516-0100 may apply for a hardship waiver under WAC 182-513-1367.

NEW SECTION

WAC 182-516-0110 Self-settled trusts overview. (1) A trust containing the assets of a beneficiary's spouse may be a self-settled trust based on the date it was established. For specific rules regarding this, see WAC 182-516-0130.

(2) To determine whether the assets of the self-settled trust should be counted as income, a resource, or an asset transfer, the medicaid agency or its designee applies the following rules based on when the trust was established:

(a) For revocable self-settled trusts, see WAC 182-516-0115.

(b) For irrevocable self-settled trusts for a disabled client under age sixty-five established on or after August 11, 1993, see WAC 182-516-0120.

(c) For irrevocable pooled self-settled trusts for a disabled client established on or after August 11, 1993, see WAC 182-516-0125.

(d) For all other irrevocable self-settled trusts:

(i) Established on or after August 11, 1993, see WAC 182-516-0130.

(ii) Established before August 11, 1993, see WAC 182-516-0135.

NEW SECTION

WAC 182-516-0115 Revocable self-settled trusts established on or after August 11, 1993. (1) This section applies to revocable trusts that are self-settled and established on or after August 11, 1993.

(2) This section does not apply to assets in a revocable trust established before August 11, 1993.

(3) A revocable trust is a self-settled trust if:

(a) The assets of the trust are at least partially from the beneficiary or the beneficiary's spouse;

(b) The trust is not established by will; and

(c) The trust was established by:

(i) The beneficiary or that beneficiary's spouse;

(ii) A person, including a court or administrative body, with legal authority to act in place or on behalf of the beneficiary or that beneficiary's spouse; or

(iii) A person, including a court or administrative body, acting at the direction or upon the request of the beneficiary or that beneficiary's spouse.

(4) The medicaid agency or its designee treats assets in a revocable self-settled trust under this section as follows:

(a) Assets are subject to the resource exclusions under chapter 182-512 WAC; however, for an institutionalized individual, the resource exclusion for the home under WAC 182-512-0350 does not apply; and

(b) Assets not excluded under chapter 182-512 WAC are available resources.

(5) Payments from assets in the trust under this section to or for the benefit of the beneficiary are unearned income of the beneficiary.

(6) If unearned income under subsection (5) of this section was from an available resource under subsection (4) of this section, then the value of the available resource will be reduced by the amount of unearned income under subsection (5) of this section.

(7) Any payments from the revocable trust, other than payments under subsections (5) and (6) of this section, are uncompensated asset transfers.

NEW SECTION

WAC 182-516-0120 Irrevocable self-settled trusts for a disabled client under age sixty-five established on or after August 11, 1993. (1) This section governs how the agency or its designee treats self-settled trusts, for a disabled client under age sixty-five established under 42 U.S.C. 1396p

(d)(4)(a) on or after August 11, 1993, for medicaid eligibility purposes.

(2) A self-settled trust established on or after August 11, 1993, is not an available resource if:

(a) The beneficiary is under age sixty-five and disabled under WAC 182-512-0050 (1)(c) when the trust is established;

(b) The trust is irrevocable;

(c) The trust was established for the sole benefit of that beneficiary;

(d) The trust was established by the beneficiary's parent, the beneficiary's grandparent, the beneficiary's legal guardian, by a court, or on or after December 13, 2016, the beneficiary; and

(e) The trust says that the states that have spent medicaid funds for the beneficiary will receive all amounts remaining in the trust up to the amount of medicaid funds spent for the beneficiary.

(i) For trusts established from August 11, 1993, to July 31, 2003, the trust must pay the states when the beneficiary dies.

(ii) For trusts established on or after August 1, 2003, the trust must pay the states when the beneficiary dies, the trust terminates, or the beneficiary's disability ends.

(3) The medicaid agency or its designee does not apply a penalty period to a beneficiary for asset transfers into a trust, described under subsection (2) of this section, when the beneficiary is under age sixty-five as of the date of the transfer.

(4) Assets in trusts under subsection (2) of this section continue to be unavailable resources, even after the beneficiary turns age sixty-five.

(5) Asset transfers to the trust from the beneficiary, after the beneficiary turns age sixty-five, may be subject to a transfer penalty under WAC 182-513-1363.

(6) If a trust does not meet the requirements under subsection (2) of this section, see WAC 182-516-0130.

NEW SECTION

WAC 182-516-0125 Irrevocable pooled self-settled trusts for a disabled client established on or after August 11, 1993. (1) This section governs how the agency or its designee treats pooled self-settled trusts, for a disabled client established under 42 U.S.C. 1396p (d)(4)(c) on or after August 11, 1993, for medicaid eligibility purposes.

(2) A pooled self-settled trust established on or after August 11, 1993, is not an available resource if:

(a) The beneficiary is disabled under WAC 182-512-0050 (1)(c) when the trust is established;

(b) The trust is irrevocable;

(c) An account in the trust was established for the sole benefit of that beneficiary;

(d) An account in the trust was established by that beneficiary, the beneficiary's parent, grandparent, legal guardian, or by a court;

(e) The trust was established by and is managed by a nonprofit association;

(f) A separate account is maintained for each beneficiary of the trust, but, for the purposes of the investment and management of funds, the trust pools these accounts; and

(g) The trust says that:

(i) Upon the death of the beneficiary, or, for trust accounts established on or after August 1, 2003, when the trust account terminates or the beneficiary's disability ends, the funds will remain in the trust to benefit other disabled beneficiaries; or

(ii) The states that have spent medicaid funds for the beneficiary will receive all amounts remaining in the trust account for that beneficiary up to the amount of medicaid funds spent for the beneficiary.

(A) For trust accounts established from August 11, 1993, to July 31, 2003, the trust must pay the states when the beneficiary dies.

(B) For trust accounts established on or after August 1, 2003, the trust must pay the states when the beneficiary dies, the trust terminates, or the beneficiary's disability ends.

(3) The medicaid agency or its designee does not apply a penalty period to a beneficiary for asset transfers into a trust, described under subsection (2) of this section, when the beneficiary is under age sixty-five as of the date of the transfer.

(4) Assets in trusts under subsection (2) of this section continue to be unavailable resources, even after the beneficiary turns age sixty-five.

(5) Asset transfers to the trust from the beneficiary, after the beneficiary turns age sixty-five, may be subject to a transfer penalty under WAC 182-513-1363.

(6) If a trust does not meet the requirements under subsection (2) of this section, see WAC 182-516-0130.

NEW SECTION

WAC 182-516-0130 Irrevocable self-settled trusts established on or after August 11, 1993. (1) This section governs irrevocable self-settled trusts established on or after August 11, 1993, that do not meet the rules under either WAC 182-516-0120 or 182-516-0125.

(2) A trust established on or after August 1, 2003, is a self-settled trust if:

(a) The assets of the trust are at least partially from the beneficiary or the beneficiary's spouse, or would have been owned by the beneficiary or the beneficiary's spouse unless diverted by the beneficiary, the beneficiary's spouse, the court, or someone acting on behalf of the beneficiary or the beneficiary's spouse;

(b) The trust is not established by will; and

(c) The trust was established by:

(i) The beneficiary or that beneficiary's spouse;

(ii) A person, including a court or administrative body, with legal authority to act in place or on behalf of the beneficiary or that beneficiary's spouse; or

(iii) A person, including a court or administrative body, acting at the direction or upon the request of the beneficiary or that beneficiary's spouse.

(3) A trust established from August 11, 1993, to July 31, 2003, is a self-settled trust if:

(a) The assets of the trust are at least partially from the beneficiary, or would have been owned by the beneficiary unless diverted by the beneficiary, the court, or someone acting on behalf of the beneficiary;

(b) The trust is not established by will; and

(c) The trust was established by:

(i) The beneficiary;

(ii) A person, including a court or administrative body, with legal authority to act in place or on behalf of the beneficiary; or

(iii) A person, including a court or administrative body, acting at the direction or upon the request of the beneficiary.

(4) This section applies only to the assets contributed to a trust:

(a) Under subsection (2) of this section, by either the beneficiary or that beneficiary's spouse; or

(b) Under subsection (3) of this section, by the beneficiary.

(5) The medicaid agency or its designee applies the rules of this section without regard to:

(a) The purpose for establishing a trust;

(b) Whether the trustees have or may exercise any discretion under the terms of the trust;

(c) Restrictions on when or whether distributions may be made from the trust; and

(d) Restrictions on the use of distributions from the trust.

(6) Treatment of payments or benefits from trusts established under this section.

(a) Subject to subsection (7) of this section, if there are any circumstances under which payment or benefit from the trust could be made to or for the benefit of the beneficiary, the portion of the principal from which, or the income on the principal from which, payment to the beneficiary could be made is an available resource to the beneficiary, and the payment or benefit from that portion:

(i) Is unearned income when payment or benefit is to or for the benefit of the beneficiary; and

(ii) Is an uncompensated asset transfer, if payment or benefit is for any other purpose.

(b) If there are no circumstances under which any payment or any benefit from the trust could be made to or for the benefit of the beneficiary, the part of the trust or income of that trust, from which payment or benefit cannot be made, is an uncompensated asset transfer.

(7) For the purposes of subsection (6)(a) of this section, "available resource" means a resource after the resource exclusions under chapter 182-512 WAC are applied; however, for an institutionalized individual, the resource exclusion for the home under WAC 182-512-0350 does not apply.

(8) If unearned income under subsection (6)(a)(i) of this section was from an available resource under subsection (6)(a) of this section, then the value of the available resource will be reduced by the amount of unearned income under subsection (6)(a)(i) of this section.

NEW SECTION

WAC 182-516-0135 Self-settled trusts established before August 11, 1993. (1) A revocable or irrevocable self-settled trust established before August 11, 1993, under this section is one:

(a) Established other than by will by a beneficiary or that beneficiary's spouse;

(b) Under which that beneficiary may be the beneficiary of all or part of the payments from the trust; and

(c) Under which the distribution of those payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the beneficiary.

(2) For trusts established under subsection (1) of this section, the maximum value the trustee may distribute, under any circumstances, to the beneficiary is unearned income.

(3) If a trust does not meet subsection (1)(c) of this section:

(a) The trust is an available resource to the extent that trust assets can be used for the beneficiary; and

(b) Any asset that cannot be used for the beneficiary is an uncompensated asset transfer.

(4) This section does not apply to any trust or initial trust decree established before April 7, 1986, for the sole benefit of an intellectually disabled client who resides in an intermediate care facility for the intellectually disabled.

NEW SECTION

WAC 182-516-0140 Third-party trusts. (1) This section governs third-party trust as defined under WAC 182-516-0001.

(2) A trust containing the assets of a beneficiary's spouse may be a self-settled trust based on the date it was established. For specific rules regarding this, see WAC 182-516-0130.

(3) A testamentary trust is a third-party trust created by a will where the trust is in the will and the estate is the grantor.

(4) There is no requirement for a state to be named as a remainder beneficiary in third-party trusts.

(5) If the beneficiary has the power to acquire the assets from the third-party trust, the trust is an available resource.

(6) If the beneficiary has no power to access or control trust assets or distributions, as described under WAC 182-516-0105(4), a third-party trust is not an available resource.

NEW SECTION

WAC 182-516-0145 Irrevocable trusts containing both assets of the beneficiary and third-party assets. (1) For irrevocable trusts that contain both assets of the beneficiary and third-party assets, the medicaid agency or its designee treats the assets of the beneficiary under the self-settled trust rule in effect as of the date of the trust's establishment:

(a) After August 11, 1993:

(i) For irrevocable self-settled trusts for a disabled client under age sixty-five, see WAC 182-516-0120;

(ii) For irrevocable pooled self-settled trusts for a disabled client, see WAC 182-516-0130; and

(iii) For all other trusts, see WAC 182-516-0130.

(b) Before August 11, 1993, see WAC 182-516-0135.

(2) For irrevocable trusts that contain both assets of the beneficiary and third-party assets, the agency or its designee treats third-party assets under the third-party trust rules under WAC 182-516-0140.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0200 Annuities established prior to April 1, 2009. ~~(1) ((The department determines how annuities affect eligibility for medical programs.~~

~~((2))) A revocable annuity is ~~((considered))~~ an available resource.~~

~~((3))) (2) An irrevocable annuity established prior to May 1, 2001, is not an available resource when issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established.~~

~~((4))) (3) The income from an irrevocable annuity ~~((meeting)) that meets the requirements of this section ~~((is considered in))~~ is income for determining eligibility and the amount of participation in the total cost of care. The annuity itself is not ~~((considered))~~ a resource ~~((or income))~~.~~~~

~~((5))) (4) Subject to subsection (5) of this section, an annuity established on or after May 1, 2001, and before April 1, 2009 ~~((will be considered))~~, is an available resource unless it:~~

- (a) Is irrevocable;
- (b) Is paid out in equal monthly amounts within the actuarial life expectancy of the annuitant;
- (c) Is issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established; and
- (d) Names the ~~((department))~~ state of Washington as the beneficiary of the remaining funds up to the total of medicaid funds spent on the client during the client's lifetime. This subsection only applies if the annuity is in the client's name.

~~((6))) (5) If an irrevocable annuity ~~((established on or after May 1, 2001 and before April 1, 2009 that is not scheduled to be paid out in equal monthly amounts, can still be considered))~~ is an available resource under subsection (4) of this section because it does not pay out in equal monthly amounts, it is an unavailable resource if:~~

- (a) The full pay out is within the actuarial life expectancy of the client; and
- (b) The client:
 - (i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or
 - (ii) Requests that the ~~((department))~~ medicaid agency or its designee calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant. The income from the annuity remains unearned income to the annuitant.

~~((7))) (6) An irrevocable annuity ~~((, established prior to May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty period of ineligibility, determined according to WAC 388-513-1365, may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy.~~~~

~~(8) An irrevocable annuity, established on or after May 1, 2001 and before April 1, 2009 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consider-~~

~~ation at the time it was purchased. A penalty may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy. The penalty for a client receiving:~~

~~(a) Long term care benefits will be a period of ineligibility (see WAC 388-513-1365);~~

~~(b) Other medical benefits will be ineligible in the month of application;~~

~~(9) An irrevocable annuity is considered unearned income when the annuitant is:~~

~~(a) The client;~~

~~(b) The spouse of the client;~~

~~(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client;~~

~~(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client.~~

~~(10)) is unearned income when the annuitant is:~~

~~(a) The client;~~

~~(b) The spouse of the client;~~

~~(c) The blind or disabled child, as defined in WAC 182-512-0050 (1)(b) and (c), of the client; or~~

~~(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC 182-512-0050 (1)(b) and (c), of the client.~~

~~(7) An annuity is not ~~((considered))~~ an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the ~~((cash surrender))~~ value of the annuity is ~~((considered))~~ an available resource and counts toward the maximum community spouse resource allowance.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0201 Annuities established on or after April 1, 2009. ~~((1) The department determines how annuities affect eligibility for medical programs. Applicants and recipients of medicaid must disclose to the state any interest the applicant or spouse has in an annuity.~~

~~(2) A revocable annuity is considered an available resource.~~

~~(3) The following annuities are not considered an available resource or a transfer of a resource as described in WAC 388-513-1363, if the annuity meets the requirements described in (4)(d), (e) and (f) of this subsection:~~

~~(a) An annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986;~~

~~(b) Purchased with proceeds from an account or trust described in subsection (a), (e), or (p) of section 408 of the Internal Revenue Code of 1986;~~

~~(c) Purchased with proceeds from a simplified employee pension (within the meaning of section 408 of the Internal Revenue Code of 1986); or~~

~~(d) Purchased with proceeds from a Roth IRA described in section 408A of the Internal Revenue Code of 1986.~~

(4) The purchase of an annuity not described in subsection (3) established on or after April 1, 2009, will be considered as an available resource unless it:

(a) Is immediate, irrevocable, nonassignable; and
(b) Is paid out in equal monthly amounts with no deferral and no balloon payments:

(i) Over a term equal to the actuarial life expectancy of the annuitant; or

(ii) Over a term that is not less than five years if the actuarial life expectancy of the annuitant is at least five years; or

(iii) Over a term not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(iv) Actuarial life expectancy shall be determined by tables that are published by the office of the chief actuary of the social security administration (<http://www.ssa.gov/OACT/STATS/table4c6.html>).

(e) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established;

(d) Names the state as the remainder beneficiary when the purchaser of the annuity is the annuitant and is an applicant for or recipient of medicaid, or a community spouse of an applicant for or recipient of long-term care or waiver services:

(i) In the first position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services; or

(ii) In the second position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services, if there is a community spouse, or a minor or disabled child as defined in WAC 388-475-0050 (b) and (c) who is named as the beneficiary in the first position.

(e) Names the state as the beneficiary upon the death of the community spouse for the total amount of medical assistance paid on behalf of the individual at any time of any payment from the annuity if a community spouse is the annuitant;

(f) Names the state as the beneficiary in the first position for the total amount of medical assistance paid on behalf of the individual at the time of any payment from the annuity, including both long-term care services and waiver services, unless the annuitant has a community spouse or minor or disabled child, as defined in WAC 388-475-0050 (b) and (c). If the annuitant has a community spouse or minor or disabled child, such spouse or child may be named as beneficiary in the first position, and the state shall be named as beneficiary in the second position:

(i) If the community spouse, minor or disabled child, or representative for a child named as beneficiary is in the first position as described in (f) and transfers his or her right to receive payments from the annuity for less than fair market value, then the state shall become the beneficiary in the first position.

(5) If the annuity is not considered a resource, the stream of income produced by the annuity is considered available income.

(6) An irrevocable annuity established on or after April 1, 2009 that meets all of the requirements of subsection (4)

except that it is not immediate or scheduled to be paid out in equal monthly amounts will not be treated as a resource if:

(a) The full pay out is within the actuarial life expectancy of the annuitant; and

(b) The annuitant:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant beginning with the month of eligibility. The income from the annuity remains unearned income to the annuitant.

(7) An irrevocable annuity, established on or after April 1, 2009 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource.

(8) An irrevocable annuity established on or after April 1, 2009 that meets all of the requirements of subsection (4) or (5) is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client; or

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child of the client.

(9) An annuity is not considered an available resource when there is a joint owner, co annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

(10) Nothing in this section shall be construed as preventing the department from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity other than an annuity described in subsections (3), (4), and (5).) (1) The medicaid agency or its designee determines how an annuity, purchased by or on behalf of an annuitant and established on or after April 1, 2009, affects eligibility for medicaid.

(2) General information.

(a) Clients of noninstitutional medicaid must disclose to the agency or its designee any interest that client, or the financially responsible members of that client's assistance unit, has in an annuity.

(b) Clients of institutional or home and community-based (HCB) waiver services must disclose to the agency or its designee any interest that client, or that client's community spouse, has in an annuity.

(c) Subject to (d) of this subsection, this section applies when the annuitant is:

(i) The client of medicaid;

(ii) That client's spouse, if that spouse is financially responsible for that client; or

(iii) That client's community spouse.

(d) If this section does not apply because of (c) of this subsection, but the client of institutional or HCB waiver services, or that client's community spouse, is the owner of the

annuity, then the purchase of the annuity is evaluated as an asset transfer under WAC 182-513-1363.

(e) For the definition of "disabled," see WAC 182-512-0050 (1)(b) and (c).

(f) Actuarial life expectancy in this section is rounded up to the nearest whole year.

(3) Annuities as resources.

(a) Subject to (b) of this subsection, a revocable annuity is an available resource.

(b) The following annuities are not available resources, even if revocable:

(i) An annuity described under 26 U.S.C. Sec. 408 (b) or (q); or

(ii) An annuity purchased with proceeds from:

(A) An account or trust described under 26 U.S.C. Sec. 408 (a), (c), or (p);

(B) A simplified employee pension (within the meaning of 26 U.S.C. Sec. 408(k)); or

(C) A Roth IRA described under 26 U.S.C. Sec. 408A.

(c) An annuity not described under (b) of this subsection is an available resource unless the annuity:

(i) Is issued by an entity licensed and approved to issue annuities in the jurisdiction in which the annuity is established;

(ii) Is immediate, irrevocable, nonassignable; and

(iii) Is paid out, in equal monthly amounts with no deferral and no balloon payments, over a term:

(A) Of at least five years, if the actuarial life expectancy of the annuitant is at least five years; or

(B) Not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(d) If an annuity fails either the immediate requirement under (c)(ii) of this subsection or the monthly payout requirement under (c)(iii) of this subsection, the annuity is not a resource if:

(i) The annuity is fully paid out within the actuarial life expectancy of the annuitant; and

(ii) The annuitant:

(A) Changes the scheduled payout to equal monthly payments; or

(B) Asks the agency or its designee to calculate and budget the periodic payments as equal monthly payments beginning the month of eligibility. Periodic payments made before the month of eligibility are not included in the calculation.

(iii) Nothing under (d) of this subsection affects the deferral or balloon payment requirements under (c)(iii) of this subsection, or the payment term requirements under (c)(iii)(A) or (B) of this subsection.

(4) Annuities as income.

(a) If an annuity is not an available resource under subsection (3) of this section, the payments from the annuity are unearned income to the annuitant.

(b) If an annuity is an available resource under subsection (3) of this section, the payments from the annuity are not income to the annuitant.

(5) An annuity as a transfer of assets.

(a) The purchase of an annuity is an uncompensated asset transfer, unless the annuity designates the state of

Washington as remainder beneficiary under subsection (6) of this section.

(b) The purchase of an annuity by the client of institutional or HCB waiver services is an uncompensated asset transfer, unless the annuity is an annuity under subsection (3)(b)(i) or (ii) of this section, or the annuity:

(i) Is issued by an entity licensed and approved to issue annuities in the jurisdiction in which the annuity is established;

(ii) Is immediate, irrevocable, nonassignable; and

(iii) Is paid out, in equal periodic amounts with no deferral and no balloon payments, over a term that is actuarially sound (i.e., a term that is not greater than the actuarial life expectancy of that client).

(6) Beneficiary designation requirements.

(a) Subject to (b) of this subsection, to satisfy subsection (5)(a) of this section, when the client of institutional or HCB waiver services, or that client's community spouse, is the annuitant, the annuity must:

(i) Name the states as the remainder beneficiary, for at least the total amount of services covered under medicaid, paid on behalf of the client of institutional or HCB waiver services; and

(ii) The remainder beneficiary must be listed in the annuity in the:

(A) First position;

(B) Next position, after the community spouse, and any minor or disabled children; or

(C) First position, if either the community spouse, or any minor or disabled children, or a representative for such children, named as beneficiary in the first position under (a)(ii)(B) of this subsection, transfers the right to receive payments from the annuity for less than fair market value.

(b) When the community spouse is the annuitant, the community spouse, or the community spouse's estate, cannot be named as remainder beneficiary under (a)(ii)(A) of this subsection.

(c) If a change of circumstance requires a change in beneficiary designation under (a) of this subsection, the agency or its designee reevaluates the annuity's beneficiary designation.

(7) Actuarial life expectancy is determined by tables that are published by the office of the chief actuary of the Social Security Administration.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0300 Life estates. ~~((1) The department determines how life estates affect eligibility for medical programs:~~

(2) A life estate is an excluded resource when either of the following conditions apply:

(a) It is property other than the home, which is essential to self support or part of an approved plan for self support; or

(b) It cannot be sold due to the refusal of joint life estate owner(s) to sell.

(3) Remaining interests of excluded resources in subsection (2) may be subject to transfer of asset penalties under WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(4) Only the client's proportionate interest in the life estate is considered when there is more than one owner of the life estate.

(5) A client or a client's spouse, who transfers legal ownership of a property to create a life estate, may be subject to transfer of resource penalties under WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(6) When the property of a life estate is transferred for less than fair market value (FMV), the department treats the transfer in one of two ways:

(a) For noninstitutional medical, the value of the uncompensated portion of the resource is combined with other non-excluded resources; or

(b) For institutional medical, a period of ineligibility will be established according to WAC 388-513-1363, 388-513-1364 and 388-513-1365.) (1) "Life estate" means an ownership interest in real property only during the lifetime of a specified person.

(2) Subject to subsection (3) of this section, a life estate is an available resource, unless it is either excluded or unavailable under chapter 182-512 WAC.

(3) For someone applying for or receiving long-term services and supports, a life estate interest is subject to the home equity limits under:

(a) WAC 182-513-1350 for institutional and home and community-based (HCB) waiver programs; and

(b) WAC 182-513-1215 for community first choice.

(4) For clients of institutional or HCB waiver services:

(a) If the remainder interest was transferred for less than fair market value, the medicaid agency or its designee will evaluate the transaction as an asset transfer under WAC 182-513-1363. "Remainder interest" is the fair market value of the property at the time the client transferred it and retained a life estate, minus the value of the life estate at the time of that transfer.

(b) If a client purchased a life estate but has not lived in the property for at least one year after the purchase, the purchase price of the life estate is an uncompensated asset transfer under WAC 182-513-1363.

(c) If a client purchased a life estate and has lived in the property for more than one year, it is not an uncompensated transfer, unless the purchase price for the life estate exceeded the value of the life estate. Any amount paid for a life estate in excess of the value of the life estate is an uncompensated transfer under WAC 182-513-1363.

(5) To calculate the value of a life estate:

(a) Identify the person whose life determines the length of the life estate;

(b) Identify whether uncompensated value or home equity is being calculated:

(i) If calculating uncompensated value under subsection (4)(a) or (c) of this section, identify that person's age on the person's last birthday before the transfer; or

(ii) If determining whether home equity requirements are met under subsection (3) of this section, identify that person's age on the person's most recent birthday; and

(c) Multiply the property's fair market value by the life estate factor corresponding to that person's age in the Life Estate and Remainder Interest Tables maintained by the Social Security Administration.

(6) To calculate the remainder interest, subtract the value in subsection (5) of this section from the property's fair market value at the time of the transaction that created the life estate.

NEW SECTION

WAC 182-516-0400 Promissory notes and loans. (1) General.

(a) In this section, note includes promissory note, loan or other obligation to pay.

(b) The medicaid agency or its designee determines the value of outstanding principal and interest payments using amortization schedules, unless otherwise stated in this section.

(2) A note as a resource.

(a) A note is a resource. The value of the note is the fair market value (FMV).

(b) The FMV of a note is the outstanding principal of the note, unless convincing evidence to the contrary is provided to the agency or its designee.

(c) If the note owner provides convincing evidence to the agency or its designee of a legal bar to the sale of the note, the note's FMV is zero.

(3) A note as income.

(a) Interest on a note is unearned income.

(b) If the FMV of the note under subsection (2)(c) of this section is zero, the principal portion of recurring payments is unearned income.

(c) The agency or its designee may budget the unearned income in equal monthly amounts at the request of the note owner, or at the agency or its designee's discretion. The budgeting period will be the note owner's certification period under chapter 182-504 WAC.

(4) A note as an asset transfer under WAC 182-513-1363.

(a) Subject to (b) of this subsection:

(i) The agency or its designee evaluates the purchase of a note as an asset transfer if the purchase price of the note exceeds the FMV of the note;

(ii) The value of the asset transfer is the difference between the purchase price of the note and the FMV of the note at the time of purchase; and

(iii) The agency or its designee determines the FMV of the note at the time of purchase using subsection (2) of this section, but can also determine the FMV of the note at a time after purchase if the agency or its designee determines FMV of the note has changed since the time it was purchased.

(b) The assets used to purchase a note are an uncompensated asset transfer under WAC 182-513-1363, unless the note:

(i) Prohibits the cancellation of the balance of the note upon death of the note owner; and

(ii) Is paid out, in equal periodic amounts with no deferral and no balloon payments, over a term not greater than the actuarial life expectancy of that note owner.

(c) The value of the uncompensated asset transfer under (b) of this subsection is the outstanding balance of the note due as of the date of the client's application for medical assis-

tance for institutional or home and community-based waiver services.

(d) If the purchase of a note results in a period of ineligibility under both (a) and (b) of this subsection, then the period of ineligibility under WAC 182-513-1363 will be the period that is longer.

WSR 17-24-087
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed December 5, 2017, 12:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-19-045.

Title of Rule and Other Identifying Information: WAC 182-513-1505 Purpose, 182-513-1510 Definitions, 182-513-1515 Maximum fees and costs, 182-513-1520 Procedure to revise award letter after June 15, 1998, but before September 1, 2003, 182-513-1525 Procedure for allowing fees and costs from client participation after September 1, 2003, 182-513-1530 Maximum guardianship fee and related cost deductions allowed from a client's participation or room or board on or after May 1, 2018.

Hearing Location(s): On January 9, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than January 10, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by January 9, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by January 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules have not been updated since 2003. The agency and the department of social and health services (DSHS) are amending these rules to: (1) Remove outdated sections; (2) increase payments to guardians; (3) address current court orders that predate the new rules; and (4) establish a process for court orders entered after the new rules take effect (CR-103P effective date), which is anticipated to be May 1, 2018.

These amendments repeal WAC 182-513-0505, 182-513-1510, and 182-513-1520, which are no longer necessary. WAC 182-513-1515 sets out the maximum amounts allowed before the effective date of the new rules. WAC 182-513-1525 describes the procedure for allowing fees and costs for court orders entered before the effective date of the new rules. WAC 182-513-1530:

(1) Removes HCA and DSHS from any role in determining reasonable compensation for a guardian; and (2) clarifies that HCA determines what amounts may be retained by the

person under guardian [guardianship] that would have otherwise been contributed to the cost of care or room and board. This rule also sets new maximum deduction amounts for orders entered after the effective date of the new rules.

The agency is filing these amendments in conjunction with the department's proposal to create chapter 388-79A WAC, Guardianship fees for medicaid clients.

Reasons Supporting Proposal: The repealed sections are no longer needed because the information they contain is either found elsewhere in the amended rules or in other WAC chapters, or the applicable dates have passed. Amendments to WAC 182-513-1515 and 182-513-1525 are needed to replace provisions for court orders entered after 1998 and to remove the agency notice requirement from court proceedings to request extraordinary fees and costs, respectively. (These events happened in the past, the agency does not need notice.) The amendments to WAC 182-513-1530 are necessary to increase the maximum amount allowed to pay guardians and to make clear that HCA does not deduct more than the allowed amounts from participation or room and board.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Stephen Kozak, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1343.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impose any costs on businesses.

December 5, 2017

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-15-042, filed 7/14/16, effective 7/14/16)

WAC 182-513-1515 Maximum guardianship fees and related costs before May 1, 2018. (~~The superior court may allow guardianship fees and administrative costs in an amount set out in an order.~~) (1) This section sets the maximum guardianship fees and related costs when:

(a) The court order was entered before May 1, 2018; and

(b) The client under guardianship was receiving medic-aid-funded long-term care before May 1, 2018.

(2) For court orders entered ((after June 15, 1998)) before May 1, 2018, where the order establishes or continues a legal guardianship for a ((department client, and requires a

future review or accounting; then unless otherwise modified by the process described in WAC 388-79-040:

(1) The amount of) client:

(a) Guardianship fees ~~((shall))~~ must not exceed ~~((one hundred seventy-five dollars))~~ \$175 per month;

~~((2))~~ ~~The amount of administrative)~~ (b) Costs directly related to establishing a guardianship for a ~~((department))~~ client ~~((shall))~~ must not exceed ~~((seven hundred dollars))~~ \$700; and

~~((3))~~ ~~The amount of administrative costs shall)~~ (c) Costs to maintain the guardianship must not exceed ~~((a total of six hundred dollars))~~ \$600 during any three-year period.

AMENDATORY SECTION (Amending WSR 16-15-042, filed 7/14/16, effective 7/14/16)

WAC 182-513-1525 Procedure for allowing guardianship fees and related costs from client participation ~~((after September 1, 2003))~~ before May 1, 2018. (1) ~~((After September 1, 2003, where a client is subject to a guardianship the department shall be entitled to notice of proceedings as described in RCW 11.92.150.~~

(2) ~~The notice must be served to the department's regional administrator of the program that is providing services to the client. A list of the regional administrators will be furnished upon request.~~

(3) ~~If the fees and costs requested and established by the order are equal to or less than the maximum amounts allowed under WAC 388-79-030, then the department will)~~ This section describes the procedure for allowing guardianship fees and related costs from client participation when:

(a) A court order was entered before May 1, 2018; and

(b) The client under guardianship was receiving medic-aid-funded long-term care before May 1, 2018.

(2) The medicaid agency or the agency's designee, after receiving the court order, adjusts the client's current participation to reflect the amounts, as allowed (upon receipt by the department of the court order setting the monthly amounts.

(4) ~~Should fees and costs in excess of the amounts allowed in WAC 388-79-030 be requested:~~

(a) ~~At least ten days before filing the request with the court, the guardian must present the request in writing to the appropriate regional administrator to allow the department an opportunity to consider whether the request should be granted on an exceptional basis.~~

(b) ~~In considering a request for extraordinary fees or costs, the department must consider the following factors:~~

(i) ~~The department's obligation under federal and state law to ensure that federal medicaid funding is not jeopardized by noncompliance with federal regulations limiting deductions from the client's participation amount;~~

(ii) ~~The usual and customary guardianship services for which the maximum fees and costs under WAC 388-79-030 must be deemed adequate for a medicaid client, including but not limited to:~~

(A) ~~Acting as a representative payee;~~

(B) ~~Managing the client's financial affairs;~~

(C) ~~Preserving and/or disposing of property;~~

(D) ~~Making health care decisions;~~

(E) ~~Visiting and/or maintaining contact with the client;~~

(F) ~~Accessing public assistance programs on behalf of the client;~~

(G) ~~Communicating with the client's service providers; and~~

(H) ~~Preparing any reports or accountings required by the court.~~

(iii) ~~Extraordinary services provided by the guardian, such as:~~

(A) ~~Unusually complicated property transactions;~~

(B) ~~Substantial interactions with adult protective services or criminal justice agencies;~~

(C) ~~Extensive medical services setup needs and/or emergency hospitalizations; and~~

(D) ~~Litigation other than litigating an award of guardianship fees or costs.~~

(e) ~~Should the court determine after consideration of the facts and law that fees and costs in excess of the amounts allowed in WAC 388-79-030 are just and reasonable and should be allowed, then the department will adjust the client's current participation to reflect the amounts allowed upon receipt by the department of the court order setting the monthly amounts.~~

(5) ~~In no event may a client's))~~ under WAC 182-513-1380, 183-515-1509, or 183-515-1514.

(3) A client's participation cannot be prospectively or retrospectively reduced to pay guardianship fees and related costs incurred;

(a) ~~Before ((the effective date of))~~ the client's long-term care medicaid eligibility effective date; ~~((or))~~

(b) During any ((subsequent)) time ((period)) when the client was not eligible for(;) or did not receive long-term care services; or

(c) ~~After the client has died. ((There is no client participation towards DDD-certified and contracted supported living services under chapter 388-820 WAC, so the department has no responsibility to reimburse the client for guardianship fees when those fees result in the client having insufficient income to pay their living expenses.~~

(6) ~~If)~~

(4) The fees and costs allowed by the court at the final accounting must not exceed the amounts advanced and paid to the guardian from the client's participation if:

(a) The court, at a prior accounting, ((has)) allowed the guardian to receive guardianship fees and related costs from the client's ~~((monthly income))~~ participation in advance of services rendered by the guardian(;); and

(b) The client dies before the next accounting((, the fees and costs allowed by the court at the final accounting may be less than, but may not exceed, the amounts advanced and paid to the guardian from the client's income.

(7) Guardians must furnish the regional administrator with complete packets to include all documents filed with the court and with formal notice clearly identifying the amount requested).

NEW SECTION

WAC 182-513-1530 Maximum guardianship fee and related cost deductions allowed from a client's participa-

tion or room and board on or after May 1, 2018. (1) General information.

(a) This section sets the maximum guardianship fee and related cost deductions when:

(i) A court order was entered on or after May 1, 2018; or

(ii) The client under guardianship began receiving medicaid-funded long-term services and supports on or after May 1, 2018.

(b) This section only applies to a client who is:

(i) Eligible for and receives institutional services under chapter 182-513 WAC or home and community-based waiver services under chapter 182-515 WAC, and who is required to pay participation under WAC 182-513-1380, 182-515-1509, or 182-515-1514; or

(ii) Eligible for long-term services and supports under chapter 182-513 or 182-515 WAC, and who is required to pay only room and board.

(c) All requirements of this section remain in full force whether or not the agency appears at a guardianship proceeding.

(d) In this section, the agency does not delegate any authority in determining eligibility or post-eligibility for medicaid clients.

(i) Under the authority granted by RCW 11.92.180, the agency does not deduct more than the amounts allowed by this section from participation or room and board.

(ii) The eligibility rules under Title 182 WAC remain in full force and effect.

(e) The agency does not reduce a client's participation or room and board under this section for guardianship fees or related costs accumulated during any month that a client was not required to pay:

(i) Participation under WAC 182-513-1380, 182-515-1509, or 182-515-1514; or

(ii) Room and board under chapter 182-513 or 182-515 WAC.

(f) If the client has another fiduciary, payee, or other principal-agency relationship and the agent is allowed compensation, any monthly guardianship fee approved under this section is reduced by the agent's compensation.

(2) Maximum guardianship fee and related cost deductions.

(a) The maximum guardianship fee and related cost deductions under this section include all guardianship services provided to the client, regardless of the number of guardians appointed to a client during a period of time, or whether the client has multiple guardians appointed at the same time.

(b) Maximum guardianship fees and related cost deductions are as follows:

(i) The total deduction for costs directly related to establishing a guardianship for a client cannot exceed \$1,400;

(ii) The total deduction for guardianship-related costs cannot exceed \$1,200 during any three-year period; and

(iii) The amount of the monthly deduction for guardianship fees cannot exceed \$225 per month.

(3) For people under subsection (1)(b)(i) of this section - Participation deductions.

(a) After receiving the court order, the agency or its designee adjusts the client's current participation to reflect the

deductions under WAC 182-513-1380, 182-515-1509, or 182-515-1514.

(b) The amounts of the participation deductions are the amounts under subsection (2) of this section, or the court order, whichever are less.

(c) For clients who pay room and board in addition to participation, if the client's amount of participation is insufficient to allow for the amounts under subsection (2) of this section, then, regardless of any provision of chapter 182-513 or 182-515 WAC, the client's room and board will be adjusted to allow the amounts under subsection (2) of this section.

(4) For people under subsection (1)(b)(ii) of this section - Room and board deductions.

(a) The agency adjusts the client's room and board after receiving the court order, regardless of any provision of chapter 182-513 or 182-515 WAC.

(b) The amounts of the room and board deductions are the amounts under subsection (2) of this section, or the court order, whichever are less.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-513-1505 Purpose.

WAC 182-513-1510 Definitions.

WAC 182-513-1520 Procedure to revise award letter after June 15, 1998, but before September 1, 2003.

WSR 17-24-088

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 5, 2017, 12:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-123.

Title of Rule and Other Identifying Information: Chapter 392-300 WAC, Fingerprint record checks—Access to records—Privacy.

Hearing Location(s): On January 9, 2018, at 11:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), 600 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: January 12, 2018.

Submit Written Comments to: Catherine Slagle, P.O. Box 47200, Olympia, WA 98504-7200, email Catherine.slagle@k12.wa.us, fax 360-753-4201, by January 9, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-753-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by January 2, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5605 (2017) amended sections of RCW 28A.400.303, 28A.400.305,

28A.410.010, and added a new section to chapter 28A.400 RCW. Among other things, these amendments authorize school districts to request fingerprint criminal background checks on school volunteers and address the fees OSPI charges for administering the background checks and other applicable fees for obtaining the fingerprints. The purpose of this proposed rule is to amend chapter 392-300 WAC to align OSPI's background check rules with SSB 5605 and to make further technical and substantive changes. The proposed rule changes would (1) assist in making schools safer by having fingerprint background criminal background checks for volunteers that will be processed through both the Washington state patrol and the FBI; (2) establish a separate account for the fees paid to OSPI for the cost of processing the criminal history background checks and using the monies in that account to support the costs associated with running the fingerprint background check unit at OSPI; and (3) add charter schools and state tribal education compact schools to the chapter.

Reasons Supporting Proposal: The revisions to chapter 392-300 WAC will allow schools to request fingerprint criminal background checks on volunteers as well as using the fees paid to OSPI for the cost of processing criminal history background checks to support the fingerprint background check unit, rather than using state general fund monies.

Statutory Authority for Adoption: RCW 28A.400.305.

Statute Being Implemented: RCW 28A.400.303, 28A.400.305, 28A.400.309, 28A.410.010.

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

Name of Agency Personnel Responsible for Drafting: Catherine Slagle, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-6136; Implementation: Jennifer Simmonds, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-6137.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

December 5, 2017
Chris P. S. Reykdal
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 96-17-045, filed 8/19/96, effective 9/19/96)

WAC 392-300-010 Definition—Record check database. As used in this chapter, "record check database" means the electronic database or printed copy equivalent maintained by the superintendent of public instruction or designee that contains:

(1) The names and other identifiable information of individuals checked under RCW 28A.195.080, 28A.400.303 and 28A.410.090; and

(2) Whether there is any record of arrest and prosecution for the individual.

AMENDATORY SECTION (Amending WSR 07-19-012, filed 9/7/07, effective 10/8/07)

WAC 392-300-015 Definition—District employee. As used in this chapter, "district employee" shall mean any individual currently employed by or being considered for employment by a school district, a school district contractor, (~~the state school for the deaf~~) the Washington state center for childhood deafness and hearing loss, the state school for the blind, an educational service district, educational service district contractor, charter school established under chapter 28A.710 RCW, school that is subject of a state tribal education compact under chapter 28A.715 RCW, or a Bureau of Indian Affairs funded school.

NEW SECTION

WAC 392-300-022 Definition—Volunteer. As used in this chapter, "volunteer" means an individual not employed by a school district, educational service district, the Washington state center for childhood deafness and hearing loss, the state school for the blind, charter schools established under chapter 28A.710 RCW, school that is subject of state tribal education compact under chapter 28A.715 RCW, Bureau of Indian Affairs funded school, approved private schools, and their contractors who will have regularly scheduled unsupervised access to children under eighteen years of age or developmentally disabled persons, during the course of his or her involvement with the school or organization under circumstances where access will or may involve the following:

(1) Groups of five or fewer children under twelve years of age;

(2) Groups of three or fewer children between twelve and eighteen years of age; or

(3) Developmentally disabled persons.

NEW SECTION

WAC 392-300-024 Fees for record checks. The cost of record checks must include: The fee established by the Washington state patrol and the Federal Bureau of Investigation for the criminal history background checks; a fee paid to the superintendent of public instruction for the cost of processing the criminal history background checks.

AMENDATORY SECTION (Amending WSR 10-17-059, filed 8/12/10, effective 9/12/10)

WAC 392-300-025 Access to record check information by district employee (~~(or)~~), applicant, or volunteer. All district employees (~~(and)~~), applicants, and volunteers shall have access to record check information about them maintained by the superintendent of public instruction or designee. Any additional information collected by the superintendent of public instruction or designee as a result of the

investigation of any data shall be available for inspection and copying by the district employee ~~((~~☞~~))~~, applicant, or volunteer to whom it pertains during normal office hours in the office where the information is located. ~~((Information that is gathered as part of an ongoing investigation, shall not be released to the district employee or applicant until the investigation is completed.))~~

AMENDATORY SECTION (Amending WSR 10-17-059, filed 8/12/10, effective 9/12/10)

WAC 392-300-035 Requests for record check information. In accordance with the requirements of RCW 42.56.100 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, record check information is obtainable by district employees ~~((~~☞~~))~~, applicants, or volunteers to whom it pertains when they comply with the following procedures:

The request shall be made in writing. The district employee ~~((~~☞~~))~~, applicant, or volunteer shall complete, sign and return the request for Background Check Results form located at <http://www.k12.wa.us/profpractices/fingerprint>. The written request shall be presented to the fingerprint ~~((records office))~~ background check unit of the superintendent of public instruction during customary office hours or may be mailed or faxed to the office. The request shall include the following information:

- (1) The name of the person requesting the record;
- (2) The ~~((time of day and the))~~ calendar date on which the request was made;
- (3) The nature of the request;
- (4) Height, weight and date of birth of individual fingerprinted; and
- (5) Social Security number of individual fingerprinted (optional).

AMENDATORY SECTION (Amending WSR 96-17-045, filed 8/19/96, effective 9/19/96)

WAC 392-300-045 Protection of record check information. Members of the public and agency personnel not processing record check information shall not be permitted access to any criminal record information.

(1) Record check information and a facility for their inspection will be provided by the fingerprint ~~((record office))~~ background check unit. Such records shall not be removed from the place designated. Records may be copied pursuant to the provisions of WAC 392-300-040.

(2) All record check information shall be maintained in a secure and private environment in order to protect the confidentiality of all district employees ~~((~~☞~~))~~, applicants, and volunteers.

(3) All employees of the superintendent of public instruction who have access to criminal record information shall undergo record checks by the Washington state patrol and the Federal Bureau of Investigation.

AMENDATORY SECTION (Amending WSR 10-22-054, filed 10/28/10, effective 11/28/10)

WAC 392-300-050 Access to record check database. School districts, ~~((the state school for the deaf))~~ the Washington state center for childhood deafness and hearing loss, the state school for the blind, educational service districts, state tribal education compact schools, Bureau of Indian Affairs funded schools, approved charter schools, authorized employees of approved private schools, colleges and universities shall establish written policies or procedures to determine which employees are authorized to access the database. Access to the superintendent of public instruction's record check database shall be limited to:

(1) Employees of the superintendent of public instruction processing record check information including employees within the fingerprint ~~((records section))~~ background check unit, the office of professional practices, the legal services section, the certification section or their equivalents in case of future agency reorganization.

(2) Authorized employees of school districts.

(3) Authorized employees of educational service districts.

(4) Authorized employees of college or universities with ~~((state board of education))~~ professional education standards board approved certification programs.

(5) Authorized employees of the ~~((state school for the deaf))~~ Washington state center for childhood deafness and hearing loss.

(6) Authorized employees of the state school for the blind.

(7) Authorized employees of Bureau of Indian Affairs funded schools.

(8) Authorized employees of state tribal education compact schools.

(9) Authorized employees of approved private schools.

~~((9))~~ (10) Authorized employees of approved charter schools.

(11) Other authorized individuals as determined by the superintendent of public instruction or designee.

Access to the database will be controlled by a confidential password issued by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 07-19-012, filed 9/7/07, effective 10/8/07)

WAC 392-300-055 Prohibition of redissemination of fingerprint record information by educational service districts, ~~((the state school for the deaf))~~ the Washington state center for childhood deafness and hearing loss, the state school for the blind, school districts, Bureau of Indian Affairs funded schools, state tribal education compact schools, approved private schools, and approved charter schools. Fingerprint record information is highly confidential and shall not be redisseminated to any organization or individual by any educational service district, ~~((state school for the deaf))~~ the Washington center for childhood deafness and hearing loss, state school for the blind, school district, ~~((~~☞~~))~~ Bureau of Indian Affairs funded school, state

tribal education compact schools, approved private schools, or approved charter schools.

AMENDATORY SECTION (Amending WSR 07-19-012, filed 9/7/07, effective 10/8/07)

WAC 392-300-060 Protection of fingerprint record information by educational service districts, ~~((state school for the deaf)) the Washington center for childhood deafness and hearing loss, state school for the blind, school districts, ~~(and)~~ Bureau of Indian Affairs funded schools, state tribal education compact schools, approved private schools, and approved charter schools.~~ Educational service districts, ~~((state school for the deaf)) the Washington state center for childhood deafness and hearing loss, state school for the blind, school districts, ~~(and)~~ Bureau of Indian Affairs funded schools, state tribal education compact schools, approved private schools, and approved charter schools~~ shall have policies and procedures to:

(1) Protect the confidentiality of fingerprint record information, including the secure location of ~~((RAP sheets)) criminal history record information (CHRI);~~

(2) Limit access to authorized personnel processing or requiring fingerprint record information to make employment decisions; and

(3) Prevent the unlawful dissemination of fingerprint record information.

Noncompliance with these provisions may allow for the recovery of civil damages under applicable federal and state statutes.

AMENDATORY SECTION (Amending WSR 10-22-054, filed 10/28/10, effective 11/28/10)

WAC 392-300-070 Private school fingerprint process. Fingerprinting of subject individuals employed by private schools.

(1) Definitions of private school terms.

(a) "Subject individual" means: Any person, certified or classified employed by a private school or volunteer in a position having regularly scheduled, unsupervised access to children;

(b) "Regularly scheduled, unsupervised access to children" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;

(c) "Fee" means the total charges assessed to process fingerprint cards through the Washington state patrol and Federal Bureau of Investigation records check;

(d) "Information to be required" means all information requested by the office of the superintendent of public instruction;

(e) "Conviction~~((s of crimes))~~ information" means, notwithstanding any other statutes or Washington administrative rule, ~~((conviction of a crime listed in WAC 180-86-013, or being under indictment for any of the crimes listed in WAC 180-86-013))~~ criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject;

(f) "Private school" means a school that is approved with the Washington state board of education under chapter 180-90 WAC.

(2) The office of the superintendent of public instruction shall request criminal information from the Washington state patrol and the Federal Bureau of Investigation in the manner prescribed by law. A fee shall be charged for such services.

(3) Upon the private school's submission of the completed fingerprint cards and information form, the office of the superintendent of public instruction shall review the criminal records of subject individual.

(4) OSPI will send conviction information to administrators of approved private schools as allowed under RCW 10.97.050.

(5) The office of the superintendent of public instruction shall assure the destruction of all fingerprint cards, facsimiles or other materials from which fingerprints can be reproduced used by Washington state patrol or Federal Bureau of Investigation.

(6) Only cards and forms approved by the office of the superintendent of public instruction will be accepted. The office of the superintendent of public instruction will hold fingerprint cards on file and notify the private school and/or subject individual when there is no fee, an incorrect fee, when necessary information is missing from the fingerprint cards, or the information form was not received.

(7) The office of the superintendent of public instruction will return to the private school any fingerprint cards that the Washington state patrol or Federal Bureau of Investigation rejects for poor quality prints. The private school will be responsible for having the subject individual submit additional prints as required.

(8) The superintendent's office shall maintain a record of all properly submitted fingerprint cards in the current records database for a period of at least two years. The record shall include at least the following:

(a) Card sequence number;

(b) Name of private school submitting the cards;

(c) Date cards received at the Washington state patrol;

(d) Date letter regarding incomplete card was sent to the subject individual with a copy to the private school (only if applicable);

~~((Date Washington state patrol received fingerprint cards;~~

~~((f))~~ Date private school was notified of Washington state patrol criminal history record or ~~((clearance))~~ lack of record;

~~((g))~~ (f) Date private school was notified of Federal Bureau of Investigation record or lack of record.

~~((This WAC will remain in effect through June 30, 2011.))~~

WSR 17-24-091

PROPOSED RULES

UNIVERSITY OF WASHINGTON

[Filed December 5, 2017, 1:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-18-107.

Title of Rule and Other Identifying Information: WAC 478-276-100, governing access to public records, copying.

Hearing Location(s): On January 17, 2018, at 12:30 p.m., at Gerberding Hall, Room 142, University of Washington, Seattle campus.

Date of Intended Adoption: February 8, 2018.

Submit Written Comments to: Barbara Lechtanski, University of Washington Rules Coordination Office, [P.O.] Box 351210, Seattle, WA 98195-1210, email rules@uw.edu, by January 17, 2018.

Assistance for Persons with Disabilities: Contact disability services office, phone 206-543-6450, TTY 206-543-6452, email dso@uw.edu, by January 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The University of Washington is updating WAC 478-276-100 to conform with amendments made by the 2017 legislature to RCW 42.56.120 regarding agency determination of copying costs for producing public records.

Reasons Supporting Proposal: The 2017 legislature amended RCW 42.56.120, section 3, chapter 304, Laws of 2017, and the University of Washington is updating WAC to conform to the amendment. An emergency rule is in place.

Statutory Authority for Adoption: RCW 28B.20.130, 42.56.100, 42.56.040(1), and 42.56.120 (as amended by chapter 304, Laws of 2017).

Statute Being Implemented: Chapter 304, Laws of 2017.

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

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting: Eliza Saunders, Director of Public Records and Open Meetings and Public Records Officer, 4311 11th Avenue N.E., Suite 360, Seattle, WA 98105, 206-543-9180; Implementation and Enforcement: Eliza Saunders, Director of Public Records and Open Meetings and Public Records Officer and Ann Anderson, Associate Vice President and Controller for Finance and Administration, 4311 11th Avenue N.E., Suite 360, Seattle, WA 98105, 206-543-9180.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The University of Washington does not consider this rule making to be a significant legislative rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

December 5, 2017

Barbara Lechtanski

Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 13-05-073, filed 2/19/13, effective 3/22/13)

WAC 478-276-100 Copying fees. (1) **Copying facilities available.** Facilities shall be made available to requestors for the copying of public records as set forth under WAC 478-276-095, except when and to the extent that this would unreasonably disrupt the operations of the public records office.

(2) **Copying costs.** ~~((The university may charge for providing copies of public records. Charges are posted on the office's web site.~~

~~((3) **Other costs.**)) Pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, the University of Washington 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. Therefore, the University of Washington adopts the following fees consistent with the fee schedule established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017:~~

~~((a) Fifteen cents per page for photocopies of public records, and printed copies of electronic public records when requested by the person requesting records;~~

~~((b) The university may charge ~~((for nonpaper media))~~ the actual cost of any digital storage media or device (for example, without limitation, compact disks (CDs), digital versatile disks (DVDs), audiotape, or videotape) used to provide copies, ~~((packaging,))~~ the actual cost of any container and envelope used to mail or transmit the copies to the requestor, and the actual postage or delivery charge, or other charges as allowed by law. Such charges shall not exceed the amount necessary to reimburse the university for actual costs.~~

~~((4)) (3) **Deposits.** The university may require a ten percent deposit on copying or other charges. Any required deposit must be paid before the request is processed.~~

~~((5)) (4) **Prepayment.** The public records office shall not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth above. Fee waivers are an exception and are available at the discretion of the public records officer. If payment is not received by the public records office within fifteen business days of issuance of the university's notice of availability, the university may consider the request closed, and any records or copies responsive to such request shall be subject to disposition as provided under WAC 478-276-105.~~

WSR 17-24-105

PROPOSED RULES

COLUMBIA RIVER

GORGE COMMISSION

[Filed December 6, 2017, 7:43 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amendments to land use ordinance to be consistent with recent revisions to the National Scenic Area (NSA) management plan.

Hearing Location(s): On February 13, 2018, at 9:00 a.m., at the Best Western Hood River Inn, 1108 East Marina Way, Hood River, Oregon. 9:00 a.m. is the beginning of the commission meeting. The precise time of this rule-making hearing will be available when the agenda is finalized approximately one week before the meeting.

Date of Intended Adoption: February 13, 2018.

Submit Written Comments to: Jeffrey Litwak, Counsel, Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA 98672, email jeff.litwak@gorgecommission.org, by January 29, 2017 [2018].

Assistance for Persons with Disabilities: Contact Nancy Andring, phone 509-493-3323 x0, email nancy.andring@gorgecommission.org, by January 29, 2017 [2018].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments to the Gorge Commission's National Scenic Area Land Use Ordinance for Klickitat County make the ordinance consistent with recent amendments to the NSA management plan. The amendments add two definitions and specify when new development proposals must be reviewed for cumulative effects to scenic, cultural, natural, and recreational resources in NSA. The amendments codify language already adopted into the management plan and largely codify the commission staff's existing practice.

Reasons Supporting Proposal: The amendments are necessary to comply with Columbia River Gorge National Scenic Area Act, 16 U.S.C. §§ 544 to 544p. The National Scenic Area Act requires that when the commission revises the management plan, all land use ordinances implementing the management plan must be revised to be consistent with the management plan.

Statutory Authority for Adoption: 16 U.S.C. §§ 544e(c), 544f(1); RCW 43.97.015; ORS 196.150.

Statute Being Implemented: 16 U.S.C. §§ 544e(c), 544f(1); RCW 43.97.015; ORS 196.150.

Rule is necessary because of federal law, federal court decision and state court decision, 16 U.S.C. §§ 544e(c), 544f(1); *Friends of the Columbia Gorge v. Schafer*, 624 F. Supp. 2d 1253 (D. Or. 2008); *Friends of the Columbia Gorge v. Columbia River Gorge Commission*, 248 Or. App. 301 (2012).

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jeffrey Litwak, P.O. Box 730, White Salmon, WA 98672, 509-493-3323; Implementation and Enforcement: Krystyna Wolniakowski, P.O. Box 730, White Salmon, WA 98672, 509-493-3323.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Exempt under RCW 34.05.328 [(5)](b)(iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 16 U.S.C. § 544 to 544p. Noncompliance would result in a violation of the Columbia River Gorge Compact with Oregon, litigation and a court order to enact these rules.

Explanation of exemptions: The amendments are being made solely to comply with 16 U.S.C. §§ 544e(c) and 544f(1), and two court decisions: *Friends of the Columbia Gorge v. Schafer*, 624 F. Supp. 2d 1253 (D. Or. 2008); *Friends of the Columbia Gorge v. Columbia River Gorge Commission*, 248 Or. App. 301 (2012). The amendments codify language already contained in the management plan for NSA.

December 6, 2017
Nancy A. Andring
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-02 issue of the Register.

WSR 17-24-119
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed December 6, 2017, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-120.

Title of Rule and Other Identifying Information: Amendments to marijuana advertising rules in WAC 314-55-155 Advertising.

Hearing Location(s): On January 10, 2018, at 10:00 a.m., at the Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after January 24, 2018.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, email Rules@lcb.wa.gov, fax 360-664-9689, by January 10, 2018.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, ADA coordinator, human resources, phone 360-664-1642, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by January 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is [to] amend rules due to changes in advertising requirements for licensed marijuana businesses by the legislature during the 2017 legislative session. Proposed rule changes adjust rules relative to changes in the law, as well as additional clarifying changes needed to ensure advertising

rules implement the changes to advertising restrictions as intended by the legislature. Proposed changes to rules provide additional guidance to licensed marijuana businesses for clarity on requirements and will promote clarity and consistency in enforcement.

Reasons Supporting Proposal: Rules must be consistent with and implement laws related to marijuana. Rule changes are needed to implement and ensure the intent of the legislature is carried out due to changes in the law regarding advertising by licensed marijuana businesses. Additional clarifying changes including definitions are needed for proper functionality of marijuana advertising regulations, clarity for the regulated industry, and enforcement of advertising requirements. Additional rule proposals regarding penalties for advertising violations as required under RCW 69.50.369(10) will be accomplished in a separate rule making as other changes to the same penalty rule are needed unrelated to advertising penalties.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, and 69.50.369.

Statute Being Implemented: RCW 69.50.369.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1622; Implementation and Enforcement: Justin Nordhorn, Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1600.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required under RCW 34.05.325 because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: This rule proposal incorporates changes to advertising requirements for licensed marijuana businesses set by the legislature in the 2017 legislative session. Changes are dictated by statute and include definitions and clarifying changes to ensure the intent of the legislature is carried out, clarity for the regulated marijuana industry, and proper enforceability. Additional changes to ensure rules are current, clear, and well organized are also proposed.

December 6, 2017

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-155 Advertising. ~~((1) Advertising by retail licensees.~~ The WSLCB limits each retail licensed premises to a maximum of two separate signs identifying the retail outlet by the licensee's business name or trade name. Both signs must be affixed to the building or permanent structure and each sign is limited to sixteen hundred square inches.

~~(2) General.)~~ The following provisions apply in addition to the requirements and restrictions in RCW 69.50.369.

(1) Advertising generally. The following requirements apply to all advertising by marijuana licensees in Washington state.

(a) All marijuana advertising and labels of usable marijuana, marijuana concentrates, and marijuana-infused products sold in the state of Washington must not contain any statement, or illustration that:

~~((a))~~ (i) Is false or misleading;

~~((b))~~ (ii) Promotes over consumption;

~~((c))~~ (iii) Represents the use of marijuana has curative or therapeutic effects;

~~((d))~~ (iv) Depicts a child or other person under legal age to consume marijuana, or includes:

~~((i))~~ (A) The use of objects, such as toys, inflatables, movie characters, cartoon characters suggesting the presence of a child, or any other depiction or image designed in any manner to be likely to be appealing to youth or especially appealing to children or other persons under legal age to consume marijuana; or

~~((ii))~~ (B) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

~~((3))~~ (b) No ~~((licensed))~~ marijuana ~~((producer, processor, or retailer))~~ licensee shall place or maintain, or cause to be placed or maintained, an advertisement of a marijuana business or marijuana product, including marijuana concentrates, usable marijuana, or ((a)) marijuana-infused product;

(i) In any form or through any medium whatsoever;

~~((a))~~ within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older unless the one thousand minimum distance requirement has been reduced by ordinance in the local jurisdiction where the licensed retailer is located and the licensed retailer is located within one thousand feet of a restricted location listed in this paragraph;

~~((b))~~ (ii) On or in a private vehicle, public transit vehicle ((a)), public transit shelter, bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location; ~~((c))~~

~~((e))~~ On or in a publicly owned or operated property.)

(c) All advertising for marijuana businesses or marijuana products, regardless of what medium is used, must contain text stating that marijuana products may be purchased or possessed only by persons twenty-one years of age or older. Examples of language that conforms to this requirement include, but are not limited to: "21+," "for use by persons 21 and over only," etc.

(d) A marijuana licensee may not engage in advertising or marketing that specifically targets persons residing out of the state of Washington.

(2) **Outdoor advertising.** In addition to the requirements for advertising in subsection (1) of this section, the following restrictions and requirements apply to outdoor advertising by marijuana licensees:

(a) Except for the use of billboards as authorized under RCW 69.50.369 and as provided in this section, licensed marijuana retailers may not display any outdoor signage other than two separate signs identifying the retail outlet by the licensee's business name or trade name, stating the location of the business, and identifying the nature of the business. Both signs must be affixed to a building or permanent structure and each sign is limited to sixteen hundred square inches.

(i) All outdoor signs, including billboards, are limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business.

(ii) No outdoor advertising signs, including billboards, may contain depictions of marijuana plants or marijuana products.

(A) A depiction of a marijuana plant means an image or visual representation of a cannabis leaf, plant, or the likeness thereof that explicitly suggests or represents a cannabis leaf or plant.

(B) A depiction of a marijuana product means an image or visual representation of usable marijuana, marijuana-infused products, or marijuana concentrates, or an image that indicates the presence of a product, such as smoke, etc.

(iii) Stating the location of the business may include information such as the physical address or location, directional information, web site address, email address, or phone number of the licensed business.

(iv) Identifying the nature of the business may include information related to the operation of the business, what the business is engaged in, or the goods the business offers for sale.

(v) Double-sided signs or signs with text visible on opposite sides are permissible and count as a single sign so long as the sign is contained in or affixed to a single structure.

(b) No marijuana licensee may use or employ a commercial mascot outside of, and in proximity to, a licensed marijuana business.

(c) Outdoor advertising is prohibited on signs and placards in arenas, stadiums, shopping malls, fairs that receive state allocations, farmers markets, and video game arcades, whether any of the foregoing are open air or enclosed, but not including any such sign or placard located at an adult only facility.

(d) The restrictions in this section and RCW 69.50.369 do not apply to outdoor advertisements at the site of an event to be held at an adult only facility that is placed at such site during the period the facility or enclosed area constitutes an adult only facility, but must not be placed there more than fourteen days before the event, and that does not advertise any marijuana product other than by using a brand name, such as the business or trade name or the product brand, to

identify the event. Advertising at adult only facilities must not be visible from outside the adult only facility.

(e) A sign affixed to the licensed premises or in the window of a licensed premises indicating the location is open for business, closed for business, the hours of operation, or that the licensed location has an ATM inside is not considered advertising for the purposes of this section.

(f) "Adopt-a-Highway" signs erected by the Washington state department of transportation under a current valid sponsorship with the department of transportation are not considered advertising for the purposes of this section.

(3) Advertising or signs within the premises of a licensed marijuana retail store that may be visible from outside the premises must meet the requirements for outdoor advertising as provided in RCW 69.50.369 and this section.

(4) Promotional items such as giveaways, coupons, and distribution of branded or unbranded merchandise are banned.

(5) Marijuana retail licensees holding a medical marijuana endorsement may donate product to qualifying patients or designated providers who hold a valid recognition card. Retail licensees may not advertise "free" or "donated" product.

(6) Except for outdoor advertising under subsection (2) of this section, all advertising must contain the following warnings that must be in type size at least ten percent of the largest type used in the advertisement:

(a) "This product has intoxicating effects and may be habit forming.";

(b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";

(c) "There may be health risks associated with consumption of this product."; and

(d) "For use only by adults twenty-one and older. Keep out of the reach of children."

(7) For the purposes of this section, the following definitions apply:

(a) "Adult only facility" means:

(i) A location restricted to persons age twenty-one and older by the WSLCB or classified by the WSLCB as off limits to persons under twenty-one years of age; or

(ii) A venue restricted to persons age twenty-one and older and where persons under twenty-one years of age are prohibited from entering or remaining, including employees and volunteers.

(b) "Billboard" means a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of ten feet in height by twenty feet in width.

(c) "Off-premises sign" means a sign relating, through its message and content, to a business activity, product, or service not available on the premises upon which the sign is erected.

WSR 17-24-120
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed December 6, 2017, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-119.

Title of Rule and Other Identifying Information: Amendments to public records rules and board operations rules in chapters 314-60 and 314-42 WAC. WAC 314-60-010 Purpose, 314-60-015 Agency description—Contact information, 314-60-025 Public records officer (new section), 314-60-070 Availability of public records, 314-60-080 Requests for public records, 314-60-085 Processing public records requests, 314-60-087 Processing public records requests (repealer), 314-60-090 Costs of providing copies of public records, 314-60-100 Exemptions, 314-60-110 Review of denials of public records requests, 314-60-404 Operations and procedure (repealer), and 314-42-001 Board operations and procedure (new section).

Hearing Location(s): On January 10, 2018, at 10:00 a.m., at the Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after January 24, 2018.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, email Rules@lcb.wa.gov, fax 360-664-9689, by January 10, 2018.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, ADA coordinator, human resources, phone 360-664-1642, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by January 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to ensure rules comply with changes in law so the Washington state liquor and cannabis board (WSLCB) may continue to assess costs for producing public records when appropriate. The costs proposed in these rule amendments mirror those costs provided in RCW 42.56.120 as amended by the 2017 legislature in EHB 1595. WSLCB proposes amendments to chapters 314-60 and 314-42 WAC to ensure rules are updated appropriately, [are] clear, and well organized through completing a review of chapter 314-60 WAC in conjunction with the changes needed as a result of EHB 1595. Chapter 314-60 WAC has not been updated since 2009.

Reasons Supporting Proposal: Rules must be consistent with changes to laws passed by the legislature. Changes to public records rules in chapter 314-60 WAC are needed to adapt rule requirements to changes in the law due to the passage of HB 1595 (chapter 304, Laws of 2017) to ensure the proper function of the WSLCB's public records division and applicability of charges for requested records when appropriate. A review of chapter 314-60 WAC was necessary to ensure that rules are current, clear, and well organized as a chapter review has not been conducted on these rules since 2009. These rule changes will ensure the public is well

informed of the public records process and that rules reflect current agency construct and processes.

Statutory Authority for Adoption: RCW 42.56.120, 34.05.220, 42.56.040, 66.08.030, and 66.08.050.

Statute Being Implemented: RCW 42.56.120.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1622; Implementation: Melissa Norton, Public Records Officer, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1746; and Enforcement: Justin Nordhorn, Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1600.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required under RCW 34.05.325 because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: This rule proposal incorporates changes to costs for providing public records as required under RCW 42.56.120 and EHB 1595 and does not include additional costs or reporting requirements for businesses. Additional changes to ensure rules are current, clear, and well organized are also proposed.

December 6, 2017

Jane Rushford

Chair

NEW SECTION

WAC 314-42-001 Board operations and procedure.

This section details the general course and method by which the operations of the board are channeled and determined in addition to the other functions and procedures of the board as provided in Title 314 WAC.

(1) The "Washington state liquor and cannabis board" or "board" pursuant to RCW 66.08.012 and 66.08.014, consists of three members appointed by the governor, with the consent of the senate, for staggered terms of six years. Where appropriate, the term "board" also refers to the staff and employees of the Washington state liquor and cannabis board.

(2) The board delegates certain administrative functions to an administrative director appointed by the board as provided in WAC 314-42-010.

(3) Pursuant to the requirements of the Open Public Meetings Act, chapter 42.30 RCW all determinations and business of the board will be made and conducted in meetings open to the public, except matters exempt from the act under RCW 42.30.140 or properly conducted in executive session pursuant to RCW 42.30.110.

(a) The board holds regular meetings as published with the office of the code reviser in the *Washington State Register* per RCW 42.30.075 and as published on the board's web site at www.lcb.wa.gov. For scheduling purposes, it is the board's intent to schedule petitions, take public testimony, conduct rule making activities, and adopt resolutions at its regular board meetings as published in the *Washington State Register* and posted on the WSLCB web site.

(b) Occasionally the board may deem it necessary to cancel meetings or conduct business at times other than as published in the *Washington State Register*. For these occasions, stakeholder notification will occur as provided in the Open Public Meetings Act, chapter 42.30 RCW.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-010 Purpose~~((—Washington state liquor control board))~~. The purposes of this chapter are to:

(1) Describe the organization of the Washington state liquor ~~((control))~~ and cannabis board ~~((LCB))~~ WSLCB;

(2) ~~((Ensure that LCB))~~ Detail how the WSLCB complies with laws governing the disclosure (release) of public records; and

(3) Explain how an individual or organization ~~((can))~~ may obtain public records.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-015 Agency description—Contact information~~((—Public records officer))~~. (1)(a) The ~~((board))~~ Washington state liquor and cannabis board (WSLCB) is an agency created to exercise the police power of the state in administering and enforcing ~~((all of the))~~ laws and regulations relating to alcoholic beverage control (Title 66 RCW), marijuana (chapter 69.50 RCW), tobacco (chapter 70.155 RCW), and vapor products (chapter 70.345 RCW).

(b) The board issues licenses ((to persons who handle liquor)) relating to liquor, marijuana, tobacco, and vapor products; and collects taxes imposed on liquor((; and distributes and sells spirituous liquor)) and marijuana.

~~((b))~~ (c) The ((board)) WSLCB is responsible for enforcing laws preventing access to tobacco products by persons under the age of eighteen years (chapter 70.155 RCW). The board enforces the tobacco tax laws and the department of revenue administers tobacco tax laws (chapters 82.24 and 82.26 RCW).

(2) ~~((The "Washington state liquor control board" or "board" pursuant to RCW 66.08.012 and 66.08.014, consists of three members appointed by the governor with the consent of the senate, for terms of six years that are staggered so that~~

~~an appointment or reappointment is made every two years. Where appropriate, the term "board" also refers to the staff and employees of the Washington state liquor control board.~~

~~(3) The board delegates certain administrative functions to an administrative director appointed by the board.~~

~~(4)) The Washington state liquor ((control)) and cannabis board is organized into ((six)) seven divisions:~~

~~(a) ((The)) Board administration;~~

~~(b) Director's office;~~

~~((b))~~ (c) Licensing and regulation;

~~((e))~~ (d) Enforcement and education;

~~((d) Administrative services;~~

~~(e) Business enterprise))~~ (e) Finance;

(f) Information technology; and

~~((f))~~ (g) Human resources.

~~((5))~~ (3)(a) The administrative offices of the Washington state liquor ((control)) and cannabis board are located at 3000 Pacific Avenue Southeast, Olympia, Washington 98504-3080.

~~(b) ((LCB)) WSLCB staff is also located at((:~~

~~(i) The distribution center, 4401 East Marginal Way South, Seattle, Washington;~~

~~(ii) State liquor stores in areas throughout the state; and~~

~~(iii)) enforcement offices maintained in major cities throughout the state.~~

~~((e) LCB contracts with individuals to sell liquor on commission. These contract liquor stores are located in areas throughout the state.~~

~~(d) Exact locations of state liquor stores, contract liquor stores,) Enforcement offices((;)) addresses and contact numbers are located on the ((LCB home page at www.liq.wa.gov)) WSLCB's web site at www.lcb.wa.gov.~~

~~((6) Any person wishing to access LCB public records should contact the LCB's public records officer:~~

Public Records Officer
Liquor Control Board
3000 Pacific Avenue Southeast
Olympia, Washington 98504
360-664-1714
Fax 360-664-9689
email publicrecords@liq.wa.gov

~~Information is also available on the LCB web site at www.liq.wa.gov.~~

~~(7) The public records officer will oversee compliance with the act and the implementation of the LCB's rules and regulations regarding release of public records, coordinating the staff of the public records unit and the LCB employees in this regard, and generally coordinating compliance by the LCB with the public records disclosure requirements of chapter 42.56 RCW. The public records officer will provide the "fullest assistance" to requestors; create and maintain for use by the public and LCB officials an index to public records of the LCB; ensure that public records are protected from damage or disorganization; and to prevent public records requests from causing excessive interference with essential functions of the LCB.)~~ (4) An organizational chart is available from the board's public records office which illustrates the general structure of the WSLCB's operations. More information on

the construct of the WSLCB is also available on the WSLCB's web site at www.lcb.wa.gov.

NEW SECTION

WAC 314-60-025 Public records officer. (1) The WSLCB public records officer:

- (a) Receives all public records requests made to the WSLCB;
 - (b) Provides "fullest assistance" to persons seeking WSLCB public records;
 - (c) Oversees the WSLCB's compliance with the Public Records Act, including locating, processing, and releasing records responsive to public records requests;
 - (d) Creates and maintains an index of certain WSLCB public records, to the extent required by RCW 42.56.070; and
 - (e) Prevents the fulfillment of public records requests from causing excessive interference with essential functions of the department.
- (2) Any person wishing to access WSLCB public records should contact the WSLCB's public records officer or designee at:

Public Records Officer
Liquor and Cannabis Board
3000 Pacific Avenue Southeast
Olympia, Washington 98504
360-664-1693
Fax: 360-664-9689
Email: publicrecords@lcb.wa.gov

Current contact information is also available on the WSLCB web site at www.lcb.wa.gov.

(3) The public records officer may designate one or more WSLCB staff to carry out the responsibilities set forth in subsection (1) of this section; and other staff may process public records requests. Therefore, use of the term public records officer in this chapter may include the public records officer's designee(s) or any other staff assisting in processing public records requests, where indicated by context.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-070 Availability of public records. (1) Many records are available on the WSLCB's web site at www.lcb.wa.gov. Requestors are encouraged to search for and view records on the WSLCB's web site in lieu of or prior to making a public records request. An index of public records is available as provided in subsection (3) of this section.

(2) Requestors are encouraged to contact the public records officer to determine the location and availability of records prior to or at the time of making a public records request.

(3) Hours for inspection of records.

(a) Public records are available for inspection and copying at the main office of the board during normal business hours of the ~~((LCB))~~ WSLCB, Monday through Friday, from ~~((8))~~ 9:00 a.m. to ~~((4))~~ noon and from 1:00 p.m. to 4:30 p.m., excluding state legal holidays.

~~((2))~~ (b) Records must be inspected at the offices of the WSLCB and may not be removed from WSLCB offices. The majority of public records are located at the WSLCB's central office, although some may be located in other locations, including the regional offices.

(4) **Records index.** ~~((An))~~ The WSLCB maintains an index as required under RCW 42.56.070 and updates the index on a biennial basis at minimum. The index of public records is available ~~((for use by members of the public))~~ on the WSLCB's web site at www.lcb.wa.gov, including:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases~~((:))~~;

(b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency~~((:))~~; and

~~((Administrative staff manuals and instructions to staff that affect a member of the public.~~

~~((Planning policies and goals, and interim and final planning decisions.~~

~~((Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others.~~

~~((Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.~~

~~((3))~~ Declaratory orders issued pursuant to RCW 34.05.240 containing an analysis or decision of substantial importance to the agency in carrying out its duties.

(5) **Organization of records.** ~~((LCB))~~ WSLCB will maintain its records in a reasonably organized manner. The ~~((LCB))~~ WSLCB will take reasonable actions to protect records from damage and disorganization. ~~((A requestor shall not take LCB records from LCB offices without the permission of the public records officer. A variety of records is available on the LCB web site at www.liq.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.))~~

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-080 ~~((Making))~~ Requests for public records. An individual may request a public record orally or in writing. ~~((board))~~ WSLCB encourages ~~((that))~~ all public records requests be submitted in writing ~~((and))~~. Public records requests may be sent to the WSLCB via email at publicrecords@lcb.wa.gov.

(1) A form for public records requests prescribed by the ~~((board))~~ WSLCB is available at its main office and on its web site at www.lcb.wa.gov. ~~((The))~~ A written request or ~~((prescribed))~~ public records request form ~~((shall))~~ must be submitted or presented to the public records officer or designee and may be sent to the WSLCB via email at public

records@lcb.wa.gov. The request should include the following information:

(a) The name, organization, mailing address, telephone number (~~(, fax number)~~), and email address of the ~~((person requesting the record.))~~ requestor;

(b) The ~~date and~~ time of day ~~((and calendar date on which the request was received at the main office of the board.))~~ of the request;

(c) ~~((A detailed description of the public record being requested.))~~ Identification of the public records sought, in a form or description adequate for the public records officer to identify and locate the records;

(d) If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as described ~~((:))~~; and

(e) The address where copies of the record are to be mailed or emailed, or notification that the requestor wants to examine the record at the ~~((LCB))~~ WSLCB.

(2) If the public records officer or designee accepts a request other than in writing, he or she will confirm receipt of the information and the substance of the request in writing.

~~((3))~~ 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. Standard photocopies will be provided at fifteen cents per page. (See WAC 314-60-090.)

~~(4)~~ When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the board is also a party (or when a request is made by or on behalf of an attorney for a party) the request shall be referred to the assistant attorney general assigned to the board for an appropriate response.)

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-085 Processing public records requests. (1) **Order of processing 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))~~ after receipt of the request, the public records officer or designee will do one or more of the following:

(a) Provide the records or make the records available for inspection and copying depending on the nature of the request;

(b) If copies are requested and payment of a deposit for copies, if any, is made or terms of payment agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(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. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) **If no response is received.** If the public records officer does not respond in writing within five business days after the day of receipt of the request for disclosure, the requestor should consider contacting the public records officer to ensure that the WLSLCB received the request.

(4) **Protecting the rights of others.** If 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 include a copy of the request.

~~((4))~~ (5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part, under chapter 42.56 RCW or as otherwise provided by law. If the ~~((LCB))~~ WSLCB believes that a record is exempt from disclosure and should be withheld, the public records officer or designee 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 or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

~~((5))~~ (6) **Inspection of records.**

(a) Consistent with other demands, the ~~((LCB))~~ WSLCB 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 to copy.))~~ If, after inspecting a record or records, the requestor wishes to receive a copy of a particular record or records, he or she should so indicate to the public records officer or designee. Copies will be provided pursuant to subsection (7) of this section.

(b) The requestor must ~~((claim or))~~ review the assembled records within thirty days of the ~~((LCB's))~~ WSLCB's notification to him or her that the records are available for inspection ~~((or copying))~~. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency 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 ~~((LCB))~~ WSLCB 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)).~~ If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

~~((6))~~ (7) **Providing copies of records.** ~~((After inspection is complete, the public records officer shall make the requested copies or arrange for copying.~~

~~(7))~~ (a) Upon request, the public records officer or designee will provide copies of requested records. Copies may be provided in either hard copy or electronic format, as requested. The cost for copies is set forth in WAC 314-60-090 and costs for copies of records must be paid to the WSLCB prior to delivery of copies of records.

(b) Copies may be mailed or emailed to the requestor, or made available for pickup at the WSLCB's offices, depending on the format of the records and the request of the requestor. If the copies are available for pickup at the WSLCB's offices, the requestor must pay for and pick up the copies within thirty days of the WSLCB's notification to him or her that the copies are available for pickup. The WSLCB will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the WSLCB to make arrangements to pay for and pick up the copies. If the requestor fails to pay for or pick up the copies within the thirty-day period, or fails to make other arrangements, the WSLCB may close the request. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(8) Electronic records. The process for requesting electronic public records is the same as for requesting paper public records. When a person requests records in an electronic format, the public records officer will provide the nonexempt records, or portions of such records that are reasonably locatable, in an electronic format that is used by the WSLCB and is generally commercially available, or in a format that is reasonably translatable from the format in which the WSLCB keeps the record.

(9) 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)~~ or copies of records in installments, if he or she reasonably determines that it would be practical to provide the records in that way. Costs for each installment of copies of records must be paid to the WSLCB prior to delivery of the installment. If, within thirty days, the requestor fails to ~~((inspect the entire set of records or))~~ pay for one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

~~((8))~~ (10) 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 the ~~((LCB))~~ WSLCB has completed ~~((a diligent search for the requested))~~ the records request and made any located nonexempt records available for inspection.

~~((9))~~ (11) 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 close the request and indicate the closure to the requestor ~~((that the LCB has closed the request))~~.

~~((10))~~ (12) Later discovered documents. If, after the ~~((LCB))~~ WSLCB has informed the requestor that it has provided all available records and closed a request, the ~~((LCB))~~

WSLCB becomes aware of additional responsive ~~((documents))~~ records existing at the time of the request, it will promptly inform the requestor of the additional ~~((documents))~~ records and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-090 Costs of providing copies of public records. (1) No fee ~~((shall be))~~ is charged for the inspection of public records.

(2) ~~((After the first one hundred free copies, the board charges one or more of the following fees for copies of public records:~~

(a) Up to fifteen cents per page for black and white photocopies of a record;

(b) The actual cost of manuals, blueprints, and other non-printed materials such as CDs, audio tapes, or video tapes;

~~((c) Up to fifteen cents per page for scanning existing WSLCB paper or other nonelectronic records. There will be no charge for emailing electronic records to a requestor, unless a scanning fee applies; and~~

~~((d) The cost of postage, when items are mailed. (See RCW 42.56.070.))~~ The WSLCB does not charge any fee for access to or downloading records posted on its internet web site prior to a request, unless the requestor specifically requests that posted records be provided by other means, such as a printed copy or electronic copies provided by the WSLCB.

(3)(a) The board finds it would be unduly burdensome to calculate the actual costs of providing public records to requestors as the type of request and staff time to copy and provide records vary widely. The board does not have the resources to conduct a study of these costs, and conducting a study would interfere with other essential agency functions. Additionally, through the 2017 legislative process, the public and requestors commented on and were informed of authorized fees and costs, including costs for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(b) The following fee schedule adapted from RCW 42.56.120 applies to physical and electronic copies of public records provided by the WSLCB. Copy charges may be combined to the extent more than one type of charge applies to copies responsive to a particular request.

Public Records Fee Schedule	
Charge:	Record Type:
15 cents/page	Photocopies, printed copies of electronic records when requested by the requestor, or for the use of agency equipment to make photocopies.
10 cents/page	Scanned records, or use of agency equipment for scanning.
5 cents/each 4 electronic files or attachment	Records uploaded to email, or cloud-based data storage service, or other means of electronic delivery.

Public Records Fee Schedule	
<u>10 cents per gigabyte</u>	<u>Records transmitted in electronic format or for use of agency 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>Actual cost</u>	<u>Customized service charge (in addition to fees for copies - See copying fees above), if the board estimates that the request would require use of information technology expertise to prepare data compilations, or provide customized electronic access when such compilations and customized access services are not used by the agency for other agency purposes. The board will notify such requestor of the customized service charge to be applied, why the charge applies, and an estimate of the cost of the charge, and will allow the requestor to amend the request in order to avoid or reduce the cost of the customized service charge.</u>
<u>Option for Copies:</u>	
<u>Up to \$2 flat fee</u>	<u>As an alternative to the copy charges above, the board may charge a flat fee of up to \$2 for any request when the agency reasonably estimates and documents that the costs are equal to or more than \$2. If applied to the initial installment, additional flat fees will not be charged for subsequent installments.</u>

(4) If the requestor asks the WSLCB to provide a summary of the applicable charges before any copies are made, the WSLCB will provide an estimate and will allow the requestor to revise the request to reduce the number of copies to be made to reduce the charges. The WSLCB may require a deposit of up to ten percent of the cost of providing copies for a request, including a customized service charge.

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-100 Exemptions. (1) The Public Records Act (chapter 42.56 RCW) (~~provides that a number of types of documents are~~) exempts a number of types of records

from public inspection, production, and copying. In addition, ~~((documents))~~ records 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 WSLCB for inspection and copying:

(a) **Autopsy, post mortem or medical examiner reports.** Requests for these records should be referred to the agency which originated the record(s): Coroner's office, medical examiner's office, etc. (RCW 68.50.105)

(b) **Claim file information.** On any industrial insurance claim. (RCW 51.28.070)

(c) **Criminal history reports.** Certain criminal history information concerning nonconviction data is prohibited from disclosure under chapter 10.97 RCW. Law enforcement agency reports should be referred to the agency that originated the report. (RCW 10.97.080)

(d) **Crime victims.** Files and information. (RCW 7.68.140)

~~((Individual purchases. All records whatsoever of the board showing purchases of liquor by any individual or establishment. (RCW 66.16.090)))~~ **Attorney client privileged communications, mediation communications.** Communications protected by RCW 5.60.060(2), 42.56.290 and 7.07.030 exempt from disclosure.

(f) **Medical records and data.** Medical records, drug records, accident victims and other persons to which ~~((LCB))~~ WSLCB has access. (RCW 42.56.360(2) and chapter 70.02 RCW)

(g) **Social Security numbers.** (RCW 42.56.250(3) and 42 U.S.C. Section 405 (c)(2)(C)(vii)(1))

(h) **Trade secrets.** As defined in RCW 19.108.010, including blueprints, diagrams, drawings, formulas, photos, etc., requested to be held confidential by the affected person. Should be labeled "RESTRICTED TRADE INFORMATION." (RCW 39.10.470(2) and 49.17.200)

~~((Special order requests and records of purchases by any person or persons, including spirits, beer, and wine restaurant licensees. (See RCW 66.16.090.))~~

~~((j))~~ Financial or proprietary information supplied to the board by a domestic winery, brewery, or microbrewery, acting as its own distributor, or certificate of approval holder with a direct shipping to Washington retailer endorsement, containing the identity and amount of beer or wine sold directly to licensed Washington retailers. (See RCW 66.24.206 (1)(a), 66.24.270 (2)(a), and 42.56.270.)

~~((k))~~ (j) Financial or proprietary information supplied to the ~~((board))~~ WSLCB by a licensed Washington liquor retailer containing the identity and amount of beer or wine purchased directly from a domestic winery, brewery, microbrewery, or a certificate of approval holder with a direct shipping to Washington retailer endorsement. (See RCW 66.24.210, 66.24.290, and 42.56.270.)

(2) The WSLCB is prohibited by statute from disclosing lists of individuals for commercial purposes~~((See))~~ under RCW 42.56.070~~((-))~~

~~((3))~~ Before beginning to make the copies, the public records officer 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 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 LCB will not charge sales tax when it makes copies of public records).

AMENDATORY SECTION (Amending WSR 09-07-070, filed 3/13/09, effective 4/13/09)

WAC 314-60-110 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by (~~tendering~~) submitting a written request for review. The written request (~~shall~~) must specifically refer to the written statement by the public records (~~staff member~~) officer or designee which constituted or accompanied the denial. (~~Send your~~) A written petition for review may be sent to:

Public Records Officer(~~, Public Records Unit~~)
P.O. Box 43080
Olympia, Washington 98504-3080
(~~360-664-1714~~
~~jdk@hq.wa.gov~~) 360-664-1693
publicrecords@lcb.wa.gov

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer shall refer it to the administrative director. The administrative director shall immediately consider the matter and either affirm or reverse such denial. The request shall be returned with a final decision, within two business days following the (~~LCB's~~) WSLCB's receipt of the request for review of the original denial, or within such other time as the (~~LCB~~) WSLCB and the requestor mutually agree to.

(3) If the (~~LCB~~) WSLCB 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~~) as provided in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records request.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-60-040 Operations and procedure.
WAC 314-60-087 Processing public records requests—
Electronic records.

WSR 17-24-122
PROPOSED RULES
EDMONDS COMMUNITY COLLEGE

[Filed December 6, 2017, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-013.

Title of Rule and Other Identifying Information: Public records policy, chapter 132Y-320 WAC.

Hearing Location(s): On January 26, 2018, at 10:00 a.m. - 12:00 p.m., at Edmonds Community College, Clearview Building, Room 121, 7030 196th Street S.W., Lynnwood, WA 98036.

Date of Intended Adoption: February 1, 2018.

Submit Written Comments to: Dennis Curran, Vice President for Human Resources, 20000 68th Avenue West, Lynnwood, WA 98036-5999, email dennis.curran@edcc.edu, fax 425-640-1359.

Assistance for Persons with Disabilities: Contact Nadescha Bunje, executive assistant to the vice president for human resources, phone 425-640-1036, fax 425-640-1359, email nadescha.bunje@edcc.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to align the code with recent updates in the Public Records Act concerning fees for providing copies of public records. The proposal also provides the necessary findings allowing Edmonds Community College to adopt the amended statutory default fee schedule that went into effect on July 23, 2017. The additional purpose of this proposal is to update the rule to reflect current college policies and procedures around public records requests.

Reasons Supporting Proposal: The 2017 legislature amended RCW 42.56.120(3), to require that, effective July 23, 2107 [2017], an agency using the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The college has elected not to calculate actual costs for copying records because to do so would be unduly burdensome due to the costs involved in conducting a cost study, which would divert resources away from other critical programs. The college has also implemented new policies and procedures around public records requests in response to the broad adoption of technologies including the internet and email. The proposal will support the implementation of these updated policies and procedures.

Statutory Authority for Adoption: RCW 28B.50.140, 42.56.100, 42.56.040 (1)(d), 42.56.120.

Statute Being Implemented: RCW 42.56.120.

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

Name of Proponent: Edmonds Community College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dennis Curran, Vice President for Human Resources, Clearview Building, Room 122, 425-640-1647.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required as this agency is not listed under RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

December 6, 2017
Dennis Curran
Vice President
for Human Resources

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-010 Purpose. The purpose of this chapter shall be to ensure compliance by Community College District No. 23 with the provisions of chapter ~~((42-17))~~ 42.56 RCW, commonly called ~~((Initiative No. 276, and in particular with RCW 42.17.250—42.17.340 of that act dealing with public records))~~ the Public Records Act.

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-020 Definitions. (1) "Public records" 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 any state or local agency regardless of physical form or characteristics.

(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 picture, 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) "Community College District No. 23" is an agency organized by statute pursuant to RCW 28B.50.040 and shall hereinafter be referred to as the "district." Where appropriate, the term district also refers to the board of trustees and employees of the district.

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-040 Operations and procedures. The district is established under RCW 28B.50.040 to implement the educational purposes established by RCW 28B.50.020. The college district is operated under the supervision and control of a board of trustees. The board of trustees is made up of ~~((five))~~ six members, each appointed by the governor to a term of five years. The trustees exercise the powers and duties granted them under RCW 28B.50.140. The sixth trustee, also appointed by the governor, is a student who serves a one year term.

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-050 Public records available. All public records of the district, as defined in WAC 132Y-320-020, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW ~~((42-17-310))~~ 42.56.210 through 42.56.470 and WAC 132Y-320-100~~((;))~~ Exemptions.

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-060 Public records officer. The district's public records shall be in the charge of the public records officer designated by the college president. The person so designated shall be located in the administrative offices of the district. That person may in turn designate persons in the administrative office to implement this section. The public records officer and his or her designee(s) shall be responsible for the following: The implementation of the district's rules and regulations regarding release of public records, coordinating the staff of the district in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter ~~((42-17))~~ 42.56 RCW.

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-070 Office hours. Public records shall be available for inspection and copying during the customary office hours of the district. For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon, and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays and college closures.

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-080 Requests for public records. In accordance with requirements of chapter ~~((42-17))~~ 42.56 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or copies of such records may be obtained by members of the public ~~((upon compliance))~~ in accordance with the following procedures:

(1) A request shall be made in writing upon a form ~~((prescribed))~~ provided by the district which shall be available on the district's web site or at its administrative office. The form ~~((shall))~~ may be submitted online, by email, mail or fax or presented to the public records officer, or to any member of the district's staff if the public records officer is not available, at the administrative offices of the district during customary office hours.

At a minimum, the request ~~((shall))~~, regardless of how it is submitted, should include the following information:

(a) The name of the person requesting the record;

(b) The mailing address, email address or phone number of the person requesting the record;

(c) The ((time of day and)) calendar date on which the request was made;

~~((e))~~ (d) The nature of the request;

~~((d))~~ If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the district's current index, an appropriate) (e) A description of the specific record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer, his or her designee, or the staff member to whom the request is made to assist the member of the public in appropriately identifying the public record requested.

Records may be reviewed in person at the district office during customary office hours. Alternatively, the district will, upon request, provide printed or digital copies of the records. Fees for providing copies of records may apply, in accordance with WAC 132Y-320-090 Fees.

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-090 ((Copying)) Fees. (1) In accordance with RCW 42.56.070(7) and 42.56.120, the district may charge fees for providing copies of public records. The district has determined that calculating the actual costs for providing copies would be unduly burdensome. This determination is based on the large number of factors involved in calculating the actual cost and the frequency with which these factors change. The district does not currently have accurate data regarding these factors, nor does it have the resources or appropriated funds to conduct an actual cost study. The district cannot divert resources away from other critical district programs in order to perform such a cost study. Additionally, such a study would likely need to be repeated on a regular basis. Therefore, the district adopts the schedule of fees provided in RCW 42.56.120(2).

(2) No fee shall be charged for the inspection of public records. The district shall charge a fee ~~((of ten cents per page of copy))~~ for providing copies of public records ((and for use of the district's copy equipment. This charge is)), according to the following schedule:

(a) Ten cents per page of copy for providing printed copies of public records and for use of the district's copy equipment;

(b) Ten cents per page for scanned records or use of agency equipment for scanning;

(c) Ten cents per every four electronic files attached to email or uploaded to a cloud-based data storage service or other means of electronic delivery;

(d) Ten cents per gigabyte for records transmitted in electronic format or for use of agency equipment to send records electronically.

These charges represent the amount necessary to reimburse the district for its actual costs incident to such copying((. If a particular request for copies requires an unusually large amount of time, or the use of any equipment not readily

available, the district will provide copies at a rate sufficient to cover any additional cost)) and/or electronic document preparation. Additionally, the district may impose a customized service charge to cover its costs if the request requires the use of IT expertise to prepare data compilations or if such customized access services are not used by the agency for other business purposes. The district may require a ten percent deposit in advance if the fee for producing copies of responsive records will exceed five hundred dollars. All fees must be paid by credit or debit card, money order, cashier's check or cash in advance. The charges above may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

Upon request, the district will provide a summary of the applicable charges before any copies are made and the requestor may revise the request to reduce the number of copies to be made and reduce the applicable charges.

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-100 Exemptions. (1) The district reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 132Y-320-080 is exempt under the provisions of chapter ((42-17)) 42.56 RCW.

~~((2))~~ In addition, documents are exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware that some statutes outside the Public Records Act restrict the availability of some documents held by Community College District No. 23 for inspection and copying.

(2) Pursuant to RCW ~~((42-17-310))~~ 42.56.210, the district also reserves the right to ((delete)) redact identifying details when it makes available or publishes any public record in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter ((42-17)) 42.56 RCW and/or other applicable statutes. The public records officer or his or her designee will fully justify such ((deletion)) redaction in writing.

(3) All denials of requests for public records ~~((must))~~ will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-110 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or ~~((other staff member))~~ his or her designee which constituted or accompanied the 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))~~ his or her designee shall refer ~~((#))~~ the request for review to the president of the college. The president or his or her designee shall immediately consider the matter and either affirm or reverse such denial or consult with the attorney general to review the denial. In any case, the request shall be returned with a final decision within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the district has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-120 Protection of public records.

Requests for public records shall be made in the administration building of Edmonds Community College or submitted to the public records officer or his or her designee by mail, email, fax or phone. Public records and a facility for their inspection will be provided by the public records officer. Such records shall not be removed from the place designated for their inspection. Copies shall be made in the administration building at Edmonds Community College. ~~((If copying facilities are not available at the college, the college will arrange to have copies made commercially according to the provisions of WAC 132Y-320-090, Copying.))~~

NEW SECTION

WAC 132Y-320-150 Notification of affected persons.

If the requested record is not exempt from release under WAC 132Y-320-100 and contains information which could identify an individual or agency, the district may notify the individual or agency thus identified that release of the record has been requested. In such cases the college's initial response to the request will allow a reasonable time for the identified individual or agency to seek court protection from release of the record.

AMENDATORY SECTION (Amending WSR 89-12-057, filed 6/6/89)

WAC 132Y-320-990 Appendix A—Request for public record to Community College District No. 23.

APPENDIX A

REQUEST FOR PUBLIC RECORD TO COMMUNITY COLLEGE

DISTRICT NO. 23

EDMONDS COMMUNITY COLLEGE

~~((.....))~~
Signature Name (please print)

.....
Name of Organization

.....
Mailing Address of Applicant Phone Number

.....
Date Request Made at Community College District No. 23 Time of Day of Request

.....
Nature of Request

.....
Identification Reference on Current Index (please describe)

.....
Description of record or matter requested, if not identifiable by reference to current index of Community College District No. 23.

.....
Request Approved By Date Public Records Officer

.....
Request Denied Reasons for Denial

.....
Referred to Date

Request Date: _____

Time of Day of Request: _____

Name: _____

Organization (if applicable): _____

Mailing Address: _____

City: _____

State: _____ Zip: _____

Phone: _____

Email: _____

Nature of Request: _____

.....
Description of Records Requested: _____

If this request is for a list of individuals, will the information provided be used for commercial purposes? Yes/No

Preferred Method of Receiving the Records Requested:

_____ Hard copies delivered by mail.

_____ Digital copies on CD delivered by mail.

Digital copies delivered by email.

Fax. Fax number: _____

Review records in person at the college.

WSR 17-24-127
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2017-12—Filed December 6, 2017,
10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-180.

Title of Rule and Other Identifying Information: Update to pharmacy benefit manager (PBM) rules.

Hearing Location(s): On January 11, 2018, at 11:00 a.m., at the Office of the Insurance Commissioner (OIC), Training Room, TR 120, 5000 Capitol Boulevard S.E., Tumwater, WA 98504.

Date of Intended Adoption: January 12, 2018.

Submit Written Comments to: Candice Myrum, P.O. Box 40258, Olympia, WA 98504, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by January 11, 2018.

Assistance for Persons with Disabilities: Contact Lorie Villafores [Villaflores], phone 360-725-7000, fax 360-582-3109, TTY 360-586-0241 or 360-725-7087, by January 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule revises existing language and adds new language, as applicable, in chapter 284-180 WAC to:

- Require PBMs to provide the name of a person who will serve as the PBM's single point of contact with OIC for appeals;
- Require small pharmacies and PBMs to follow OIC's filing instructions when uploading documents;
- Require PBMs to respond to OIC using OIC's electronic appeal system; and
- Require PBMs, in their responses to appeals under WAC 284-180-400, to provide enough details so that OIC can identify the exact PBM entity that issued the response.

Reasons Supporting Proposal: To clarify responsibilities and procedures for requesting appeals and make it easy to identify responsible parties.

Statutory Authority for Adoption: RCW 48.02.060, 48.02.220.

Statute Being Implemented: Chapter 19.340 RCW.

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

Name of Proponent: OIC, governmental.

Name of Agency Personnel Responsible for Drafting: Candice Myrum, P.O. Box 40258, Olympia, WA 98504, 360-725-7042; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504, 360-725-7117; and Enforcement: Toni Hood, P.O. Box 40255, Olympia, WA 98504, 360-725-7264.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These proposed rules only specify and clarify procedures for requesting, providing information for and responding to appeal requests made to OIC. As such, this rule is not a significant legislative rule but rather a procedural rule under the provisions of RCW 35.05.328 [34.05.328] (5)(c)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: All of the required actions under this proposed rule pertain to the processing of appeals for agency hearings.

December 6, 2017

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-240 Providing and updating registration information. (1) At the time of registration, a pharmacy benefit manager must provide its legal name as well as any and all additional names that it uses to conduct business.

(2) Registered pharmacy benefit managers must provide the commissioner with a valid email address, which the commissioner will use as the official contact address for ((#H)) communications regarding registrations, renewals and oversight activities.

(3) In addition to providing a valid email address, registered pharmacy benefit managers must identify a pharmacy benefit manager employee who is the single point of contact for appeals under WAC 284-180-420 and 284-180-430, and must fill out the form that the commissioner makes available for this purpose at www.insurance.wa.gov.

(4) Registered pharmacy benefit managers must ensure that the information that they disclosed when they registered with the commissioner remains current by notifying the commissioner of any changes or additions.

(a) This information includes, but is not limited to:

(i) Any and all additional names that pharmacy benefit managers use to conduct business; ((and))

(ii) The email address for official communications between the commissioner and the pharmacy benefit manager; and

(iii) The name, contact information, and any other information that the pharmacy benefit manager submitted on the commissioner's form under subsection (3) of this section regarding the pharmacy benefit manager employee who is the pharmacy benefit manager's single point of contact for appeals under WAC 284-180-420 and 284-180-430.

(b) Within thirty days of any change, pharmacy benefit managers must report changes to the commissioner using the commissioner's electronic system.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-400 Appeals by network pharmacies to pharmacy benefit managers. A network pharmacy may appeal a reimbursement to a pharmacy benefit manager (first tier appeal) if the reimbursement for the drug is less than the net amount the network pharmacy paid to the supplier of the drug. "Network pharmacy" has the meaning set forth in RCW 19.340.100 (1)(d). "Pharmacy benefit manager" has the meaning set forth in RCW 19.340.010 (6)(a). A pharmacy benefit manager must process the network pharmacy's appeal as follows:

(1) A pharmacy benefit manager must include language in the pharmacy provider contract and on the pharmacy benefit manager's web site fully describing the right to appeal under RCW 19.340.100. The description must include, but is not limited to:

(a) Contact information, including:

(i) A telephone number by which the pharmacy may contact the pharmacy benefit manager during normal business hours and speak with an individual responsible for processing appeals;

(ii) A summary of the specific times when the pharmacy benefit manager will answer calls from network pharmacies at that telephone number;

(iii) A fax number that a network pharmacy can use to submit information regarding an appeal; and

(iv) An email address that a network pharmacy can use to submit information regarding an appeal.

(b) A detailed description of the actions that a network pharmacy must take to file an appeal; and

(c) A detailed summary of each step in the pharmacy benefit manager's appeals process.

(2) The pharmacy benefit manager must reconsider the reimbursement. A pharmacy benefit manager's review process must provide the network pharmacy or its representatives with the opportunity to submit information to the pharmacy benefit manager including, but not limited to, documents or written comments. The pharmacy benefit manager must review and investigate the reimbursement and consider all information submitted by the network pharmacy or its representatives prior to issuing a decision.

(3) The pharmacy benefit manager must complete the appeal within thirty calendar days from the time the network pharmacy submits the appeal. If the network pharmacy does not receive the pharmacy benefit manager's decision within that time frame, then the appeal is deemed denied.

(4) The pharmacy benefit manager must uphold the appeal of a network pharmacy with fewer than fifteen retail outlets within the state of Washington, under its corporate umbrella, if the pharmacy demonstrates that they are unable to purchase therapeutically equivalent interchangeable product from a supplier doing business in the state of Washington at the pharmacy benefit manager's list price. "Therapeutically equivalent" is defined in RCW 69.41.110(7).

(5) If the pharmacy benefit manager denies the network pharmacy's appeal, the pharmacy benefit manager must provide the network pharmacy with a reason for the denial and the national drug code of a drug that has been purchased by other network pharmacies located in the state of Washington

at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug. "Multisource generic drug" is defined in RCW 19.340.100 (1)(c).

(6) If the pharmacy benefit manager upholds the network pharmacy's appeal, the pharmacy benefit manager must make a reasonable adjustment no later than one day after the date of the determination. If the request for an adjustment is from a critical access pharmacy, as defined by the state health care authority by rule for purpose related to the prescription drug purchasing consortium established under RCW 70.14.060, any such adjustment shall apply only to such pharmacies.

(7) If otherwise qualified, the following may file an appeal with a pharmacy benefit manager:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply.

(8) In the response to the network pharmacy, the pharmacy benefit manager must provide sufficient information to identify the exact corporate entity that received and processed the appeal. Such information must include, but is not limited to, the corporate entity's full and complete name, taxpayer identification number, and number assigned by the office of the insurance commissioner.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-420 Appeals by network pharmacies to the commissioner. The following procedure applies to brief adjudicative proceedings before the commissioner for actions involving a network pharmacy's appeal of a pharmacy benefit manager's decision in a first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs, unless the matter is converted to a formal proceeding as provided in WAC 284-180-440(3).

(1) **Grounds for appeal.** A network pharmacy or its representative may appeal a pharmacy benefit manager's decision to the commissioner if it meets all the following requirements:

(a) The pharmacy benefit manager's decision must have denied the network pharmacy's appeal, or the network pharmacy must be unsatisfied with the outcome of its appeal to the pharmacy benefit manager;

(b) The network pharmacy must request review of the pharmacy benefit manager's decision by filing a written petition for review form. A form for this purpose is available at www.insurance.wa.gov.

The petition for review must include:

(i) The network pharmacy's basis for appealing the pharmacy benefit manager's decision in the first tier appeal;

(ii) The network pharmacy's federal identification number, unified business identifier number, business address, and mailing address;

(iii) The documents from the first tier review, including the documents that the pharmacy submitted to the pharmacy benefit manager as well as the documents that the pharmacy benefit manager provided to the pharmacy in response to the first tier review; and

(iv) Any additional information that the commissioner may require.

(c) The network pharmacy must deliver the petition for review to the commissioner's Tumwater office by mail, hand delivery, or by other methods that the commissioner may make available;

(d) The network pharmacy must file the petition for review with the commissioner within thirty days of receipt of the pharmacy benefit manager's decision; and

(e) The network pharmacy making the appeal must have less than fifteen retail outlets within the state of Washington under its corporate umbrella. The petition for review that the network pharmacy submits to the commissioner must state that this requirement is satisfied, and must be signed and verified by an officer or authorized representative of the network pharmacy.

(2) **Time frames governing appeals to the commissioner.** The commissioner must complete the appeal within thirty calendar days of the receipt of the network pharmacy's appeal. An appeal before the commissioner is deemed complete when a presiding officer issues an initial order on behalf of the commissioner to both the network pharmacy and pharmacy benefit manager under subsection ~~((7))~~ (8) of this section. Within seven calendar days of the resolution of a dispute, the presiding officer shall provide a copy of the initial order to both the network pharmacy and pharmacy benefit manager.

(3) **Relief the commissioner may provide.** The commissioner, by and through a presiding officer or reviewing officer, may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, denying the network pharmacy's appeal, or may take other actions deemed fair and equitable.

(4) **Notice.** If the presiding officer under the use of discretion chooses to conduct an oral hearing, the presiding officer will set the time and place of the hearing. Written notice shall be served upon both the network pharmacy and pharmacy benefit manager at least seven days before the date of the hearing. Service is to be made pursuant to WAC 284-180-440(2). The notice must include:

(a) The names and addresses of each party to whom the proceedings apply and, if known, the names and addresses of any representatives of such parties;

(b) The official file or other reference number and name of the proceeding, if applicable;

(c) The name, official title, mailing address and telephone number of the presiding officer, if known;

(d) A statement of the time, place and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes or rules involved;

(g) A short and plain statement of the matters asserted by the network pharmacy against the pharmacy benefit manager and the potential action to be taken; and

(h) A statement that if either party fails to attend or participate in a hearing, the hearing can proceed and the presiding or reviewing officer may take adverse action against that party.

(5) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the commissioner in a brief adjudicative proceeding is limited to:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(6) **Method of response.** Upon receipt of any inquiry from the commissioner concerning a network pharmacy's appeal of a pharmacy benefit manager's decision in the first tier appeal regarding reimbursement for a drug subject to pre-determined reimbursement costs for multisource generic drugs, pharmacy benefit managers must respond to the commissioner using the commissioner's electronic pharmacy appeals system.

(7) **Hearings by telephone.** If the presiding officer chooses to conduct a hearing, then the presiding officer may choose to conduct the hearing telephonically. The conversation will be recorded and will be part of the record of the hearing.

~~((7))~~ (8) **Presiding officer.**

(a) Per RCW 34.05.485, the presiding officer may be the commissioner, one or more other persons designated by the commissioner per RCW 48.02.100, or one or more other administrative law judges employed by the office of administrative hearings. The commissioner's choice of presiding officer is entirely discretionary and subject to change at any time. However, it must not violate RCW 34.05.425 or 34.05.458.

(b) The presiding officer shall conduct the proceeding in a just and fair manner. Before taking action, the presiding officer shall provide both parties the opportunity to be informed of the presiding officer's position on the pending matter and to explain their views of the matter. During the course of the proceedings before the presiding officer, the parties may present all relevant information.

(c) The presiding officer may request additional evidence from either party at any time during review of the initial order. After the presiding officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the presiding officer, unless the presiding officer, under the use of discretion, allows additional time to submit the evidence.

(d) The presiding officer has all authority granted under chapter 34.05 RCW.

~~((8))~~ **(9) Entry of orders.**

(a) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within ten days of issuing the decision, the presiding officer shall serve upon the parties the initial order, as well as information regarding any administrative review that may be available before the commissioner. The presiding officer's issuance of a decision within the ten day time frame satisfies the seven day requirement in subsection (2) of this section.

(b) The initial order consists of the decision and the brief written statement of the basis and legal authority. The initial order will become a final order if neither party requests a review as provided in WAC 284-180-430(1).

(10) Filing instructions. When a small pharmacy or a pharmacy benefit manager provides information to the commissioner regarding appeals under WAC 284-180-420, the small pharmacy or pharmacy benefit manager must follow the commissioner's filing instructions, which are available at www.insurance.wa.gov.

WSR 17-24-128

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 6, 2017, 11:46 a.m.]

Supplemental Notice to WSR 17-11-015.

Preproposal statement of inquiry was filed as WSR 16-16-011.

Title of Rule and Other Identifying Information: The department is proposing to create new sections in chapter 388-106 WAC, Long-term care services, for a new benefit package for medicaid alternative care (MAC) and tailored supports for older adults (TSOA).

Hearing Location(s): On January 23, 2018, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than January 24, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., on January 23, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Additional changes to the rules are being proposed under this supplemental as a result of comments received and additional internal review.

Reasons Supporting Proposal: The department is proposing to create new sections in chapter 388-106 WAC, Long-term care services, for two new benefit packages for MAC and TSOA as part of Washington's medicaid transformation demonstration.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.390.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debbie Johnson, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2531.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

November 27, 2017

Katherine I. Vasquez

Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-01 issue of the Register.

WSR 17-24-129

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 6, 2017, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-10-052.

Title of Rule and Other Identifying Information: The department is proposing to create two new sections, WAC 388-79A-001 Definitions, and 388-79A-005 Maximum amount of guardianship fees and related costs for a long-term care medicaid eligible client, in new chapter 388-79A WAC, Guardianship fees for medicaid clients.

Hearing Location(s): On January 9, 2018, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Note earlier than January 10, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., January 9, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by December 26, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department, in coordination with the health care authority, is updating and establishing rules in chapter 388-79A WAC. As part of this review, the department and agency will consider fees allowed for establishing and maintaining guardianships for individuals who must participate in the cost of their health care under chapters 182-513 and 182-515 WAC and will revise rules in chapter 388-79A WAC to clarify the process in place prior to the adoption of the permanent rule that will be in chapter 182-513 WAC.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 43.20B.460, 11.92.180.

Statute Being Implemented: RCW 43.20B.460.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2271.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

November 28, 2017
Katherine I. Vasquez
Rules Coordinator

Chapter 388-79A WAC

GUARDIANSHIP FEES FOR MEDICAID CLIENTS

NEW SECTION

WAC 388-79A-001 Definitions. The following definitions apply to this chapter:

(1) "Client" means a person who is eligible for and is receiving medicaid-funded long-term care.

(2) "Guardianship fees" or "fees" means necessary fees charged by a guardian for services rendered on behalf of a client.

(3) "Participate" or "participation" means the amount a client must pay each month toward the cost of long-term care services received each month. It is the amount remaining after the post-eligibility process under:

(a) WAC 182-513-1380 for a client residing in a medical institution, as defined under WAC 182-500-0050;

(b) WAC 182-515-1509 for a client receiving home and community services (HCS) waived services in an alternate living facility (ALF), as defined under WAC 182-513-1100, or in an at-home setting; or

(c) WAC 182-515-1514 for a client receiving developmental disability administration (DDA) waived services in an ALF, as defined under WAC 182-513-1100, or in an at-home setting.

(4) "Related costs" or "costs" means necessary costs paid by the guardian, including attorney fees.

NEW SECTION

WAC 388-79A-005 Maximum amount of guardianship fees and related costs for a long-term care medicaid eligible client. (1) As mandated by RCW 43.20B.460 and in accordance with RCW 11.92.180, the maximum amount of guardianship fees and related costs must not exceed the limits of this section when the person under guardianship is:

(a) A medicaid eligible client, residing in:

(i) A medical institution, as defined under WAC 182-500-0050;

(ii) An alternate living facility (ALF), as defined under WAC 182-513-1100; or

(iii) An at-home setting; and

(b) Required under chapter 182-513 WAC or chapter 182-515 WAC to participate towards the cost of long-term care.

(2) The maximum amount of guardianship fees and related costs must not exceed the limits of chapter 388-79A WAC when:

(a) The court order establishing guardianship was entered before (CR-103 effective date); and

(b) The client under guardianship was receiving medicaid-funded long-term care before (CR-103 effective date).

(3) For all other clients not described under subsection (2) of this section, the maximum amount of guardianship fees and related costs must not exceed the limits under WAC 182-513-1530.

WSR 17-24-130
PROPOSED RULES
OFFICE OF MINORITY AND
WOMEN'S BUSINESS ENTERPRISES

[Filed December 6, 2017, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-166.

Title of Rule and Other Identifying Information: WAC 326-07-100 Fees.

Hearing Location(s): On January 9, 2018, at 10:00 a.m., at the Office of Minority and Women's Business Enterprises (OMWBE), 1110 Capitol Way South, Room #135, Olympia, WA 98501. **Live Webinar:** <https://global.gotomeeting.com/join/880652661>.

TO USE YOUR COMPUTER'S AUDIO: When the webinar begins, you will be connected to audio using your computer's microphone and speakers (VoIP). A headset is recommended.

--OR--

TO USE YOUR TELEPHONE FOR AUDIO: If you prefer to use your phone, you must select "Use Telephone" after joining the webinar and call in using the numbers below:

United States: +1 (646) 749-3112

Access Code: 880-652-661

Audio PIN: Shown after joining the webinar

Date of Intended Adoption: January 10, 2018.

Submit Written Comments to: Mark Kifowit, 1110 Capitol Way South, #150, email MarkK@omwbe.wa.gov, fax 360-586-7079, by January 8, 2018.

Assistance for Persons with Disabilities: Contact Mark Kifowit, phone 360-664-9764, fax 360-586-7079, email MarkK@omwbe.wa.gov, by December 20, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal implements HB 1595 passed during the 2017 session. The bill amended the Public Records Act, chapter 42.56 RCW. These amendments allow OMWBE to charge for scanning and digitizing records and to provide them via email, thumb drive, or compact disk.

Reasons Supporting Proposal: The agency plans to adopt the proposed statutory default fee schedule. The office is not calculating actual costs for copying records because to do so would be unduly burdensome. The agency does not have the resources to conduct a study, and it would interfere with essential OMWBE functions. In addition, RCW 42.56.120 as amended by section 3, chapter 304, Laws of 2017, allows an agency to waive any charge assessed for a public record pursuant to agency rule. Finally, the office intends to amend WAC 326-07-100 to reflect current law, technology, and processes.

Statutory Authority for Adoption: RCW 39.19.030, 42.56.040, 42.56.070, 42.56.100, 42.56.120, and chapter 304, Laws of 2017.

Statute Being Implemented: RCW 39.19.030.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fis-

cal Matters: The office intends to proceed with amending WAC 326-07-100 to comply with the 2017 HB 1595.

Name of Proponent: OMWBE, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Mark Kifowit, 1110 Capitol Way South, #150, Olympia, WA 98501, 360-664-9764; and Enforcement: Teresa Berntsen, 1110 Capitol Way South, #150, Olympia, WA 98501, 360-664-9757.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state legislature mandates the change.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The Washington state legislature mandated costs in HB 1595.

December 6, 2017

Mark Kifowit

Assistant Director of Policy

AMENDATORY SECTION (Amending WSR 98-13-007, filed 6/4/98, effective 7/5/98)

WAC 326-07-100 Fees. (~~No fee shall be charged for the inspection of public records. The office shall charge a fee of fifteen cents per page for providing copies of public records. This charge is the amount necessary to reimburse the office for its actual costs incident to such copying.~~) (1) The following copy fees and payment procedures apply to requests to the office under chapter 42.56 RCW and received on or after July 23, 2017.

(2) Pursuant to RCW 42.56.120 (2)(b), the office is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The office does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(3) The office will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The office will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the office may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The office may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the office are summa-

rized in the fee schedule available on the office's web site at www.omwbe.wa.gov.

(4) Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) 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 office will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the office of minority and women's business enterprises. The office prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The office will close 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.