

WSR 18-05-060
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Children's Administration)
 [Filed February 15, 2018, 2:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-07-034.

Title of Rule and Other Identifying Information: The department is proposing to repeal chapter 388-60 WAC, Domestic violence perpetrator treatment program standards, and create sections in new chapter 388-60A WAC, Domestic violence intervention program standards.

Hearing Location(s): On April 24, 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 April 25, 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., April 24, 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 April 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The repeal of chapter 388-60 WAC and creation of chapter 388-60A WAC are intended to update rules to raise the standards of domestic violence perpetrator treatment, thereby increasing the effectiveness of treatment throughout Washington state. A cross-walk table of existing and new WAC sections is available upon request.

Reasons Supporting Proposal: These standards have not been updated since 2001. The new requirements will increase the effectiveness of domestic violence treatment and increase the safety of victims and their children.

Statutory Authority for Adoption: RCW 26.50.150.

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: Amie Roberts, P.O. Box 45710, Olympia, WA 98504-5710, 360-902-7962.

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 Amie Roberts, P.O. Box 45710, Olympia, WA 98504-5710, phone 360-902-7962, email amie.roberts@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. DSHS conducted a survey and invited all currently certified domestic

violence treatment programs to participate. The results indicated the rule would not have "more than a minor" economic impact to the businesses that provide domestic violence treatment.

A copy of the detailed cost calculations may be obtained by contacting Amie Roberts, P.O. Box 45710, Olympia, WA 98504-5710, phone 360-902-7962, email amie.roberts@dshs.wa.gov.

February 15, 2018
 Katherine I. Vasquez
 Rules Coordinator

Chapter 388-60A WAC

DOMESTIC VIOLENCE INTERVENTION PROGRAM STANDARDS

DEFINITIONS

NEW SECTION

WAC 388-60A-0015 What definitions apply to this chapter? The following definitions apply to this chapter:

"Administrative hearing" a hearing held before an administrative law judge and conducted according to chapter 34.05 RCW and chapter 388-02 WAC.

"Assessment" means the process of obtaining pertinent bio-psychosocial information, as identified by the participant, family, and collateral sources to determine a level of care and to plan individualized domestic violence intervention services and possible referrals for ancillary treatment, assessments, and services.

"Certified" means the status given to domestic violence intervention treatment programs by the department under its authority to certify domestic violence perpetrator programs under RCW 26.50.150.

"Corrective action" means the steps required of the domestic violence intervention treatment program by the department in order to maintain or regain certification.

"Critical incident" means any one of the following events:

- (1) Any death, serious injury, or sexual assault that occurs at a program that is certified by the department;
- (2) Alleged abuse or a gross violation of rights of an individual receiving services, that is of a serious or emergency nature caused by an employee, volunteer, contractor, or another individual receiving services;
- (3) Alleged abuse, harassment, or a gross violation of rights of a direct treatment service staff member by an employee, volunteer, contractor, or another individual receiving services;
- (4) A natural disaster, such as an earthquake, volcanic eruption, tsunami, urban fire, flood, or outbreak of communicable disease that presents substantial threat to program operation or client safety;
- (5) A bomb threat or death threat;
- (6) Theft or loss of data in any form regarding an individual receiving services, including but not limited to, a missing or stolen computer, or a missing or stolen computer disc or flash drive, or any other type of memory device;

(7) Any physical violence that occurs at the program;

(8) Any violence that is perpetrated by a participant of a certified program that results in death, serious injury, or sexual assault;

(9) Any negative media event regarding a participant receiving services, or regarding a direct treatment staff member or owner(s) of the program; or

(10) Any response to the premises of a program by law enforcement or emergency personnel.

"Department" or **"DSHS"** means the Washington state Department of Social and Health Services.

"Direct service staff" means a person who works or volunteers at a certified domestic violence intervention treatment program and has been designated by the department as a trainee, staff, or supervisor.

"Domestic violence intervention treatment program" or **"program"** means a program that provides domestic violence assessments or intervention treatment to perpetrators of intimate partner violence and is certified by DSHS under this chapter 388-60A WAC.

"Evidence-based" means strategies, activities, or approaches which have been shown through scientific research and evaluation to be effective in preventing or delaying a negative outcome.

"Forensic counseling" means the provision of group or individual counseling sessions with a participant who has also been engaged with the criminal justice system. Forensic counseling involves skills in assessment, interviewing, report writing, strong verbal communication skills, and case presentation when needed. The practice of forensic counseling involves investigations, research, assessments, consultations, and the design and implementation of treatment programs. In this chapter it specifically relates to assessing, making recommendations, and providing treatment to those who have committed acts of domestic violence regardless of whether the abuse was illegal or resulted in a criminal conviction or not.

"Intimate partner" means a person who is or was married, in a state registered partnership, or in an intimate or dating relationship with another person presently or at some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married, in a domestic partnership with each other, or lived together at any time, shall be considered an intimate partner.

"Intimate partner abuse" or **"intimate partner violence"** means a pattern of abusive behavior that is used by one intimate partner against the other and may include but is not limited to assaultive and coercive behaviors, physical, sexual, emotional, verbal, psychological, and economic abuse or coercion, or the improper use of children to control the victim. It may also include the infliction or threat of harm against an intimate partner and is directed at achieving compliance from or control over that intimate partner. It may include, but is not limited to, a categorization of domestic violence offenses as defined in RCW 10.99.020 committed by one intimate partner against another.

"Level of treatment" or **"level of care"** means the level of treatment a participant is required, recommended, or currently receiving as determined by a certified program through a behavioral assessment, standardized testing, the

"risk, needs, and responsivity" form, and a current treatment plan.

"Off-site" means the provision of services by a provider from a certified domestic violence intervention treatment program at a location where the domestic violence assessment or treatment is not the primary purpose of the site, such as in correctional facilities.

"Participant" means an individual being assessed, enrolled, discharged, or treated in a certified domestic violence intervention treatment program. This individual may be court-ordered to participate in treatment or someone who chooses to voluntarily participate in treatment. The terms "client," "perpetrator," and "participant" are used interchangeably in this chapter.

"Promising practices" means programs and strategies that have some scientific research or data showing positive outcomes in delaying a negative outcome, but do not have enough evidence to support generalized conclusions.

"Victim services program" means a nonprofit program or organization that provides, as its primary purpose, assistance and advocacy for domestic violence victims. Domestic violence assistance and advocacy must include crisis intervention, individual and group support, information, referrals, safety assessments, and planning. Domestic violence victim assistance and advocacy may also include, but is not limited to: provision of shelter; emergency transportation; self-help services; culturally specific services; legal advocacy; economic advocacy; and accompaniment and advocacy through medical, legal, immigration, human services, and financial assistance systems. Domestic violence programs that are under the auspices of, or the direct supervision of a court, law enforcement, a prosecution agency, or the child protective services section of the department as defined in RCW 26.44.020 are not considered victim services programs.

"Victim" or **"survivor"** means a person who has been subjected to domestic violence. The terms "victim" and "survivor" are used interchangeably in this chapter.

PURPOSE

NEW SECTION

WAC 388-60A-0025 What is the purpose of this chapter? (1) The overall purpose of this chapter is to increase accountability and competency for programs that provide domestic violence intervention treatment as well as provide minimum standards and a pathway to achieve the following:

(a) To responsibly and as accurately as possible with the information relied upon, assess the risks, needs and responsivity for perpetrators of intimate partner violence who are seeking assessment and treatment;

(b) To increase the safety of the victim, current partner, children, and other children in the care or residence of perpetrators of intimate partner violence who are enrolled in intervention treatment; and

(c) To hold perpetrators of intimate partner violence accountable in meeting their program requirements and achieving core competencies, including documentation of their cognitive and behavioral changes and personal account-

ability as outlined in WAC 388-60A-0430, through intervention treatment using evidence-based and promising practices.

(2) The rules in chapter 388-60A WAC establish the following standards for programs that provide domestic violence assessments or any level of intervention treatment to perpetrators of intimate partner violence and include:

(a) Minimum certification requirements for programs that provide services to participants of domestic violence intervention treatment;

(b) Program administrative requirements;

(c) Program staff requirements;

(d) Quality management requirements;

(e) Facility requirements;

(f) Program policies and procedures;

(g) Program treatment record requirements;

(h) Program assessment and treatment requirements; and

(i) A grievance system that includes a grievance process, an appeal process, and access to administrative hearings.

(3) Unless otherwise provided by law, these standards apply to any program that:

(a) Provides or advertises that it provides domestic violence perpetrator assessments or evaluations for intimate partners;

(b) Provides or advertises that it provides domestic violence intervention or perpetrator treatment for intimate partners; or

(c) Defines its services as meeting court orders that require assessment, evaluation, or enrollment in, or completion of, domestic violence perpetrator treatment or domestic violence intervention treatment for intimate partners.

(4) These programs provide assessments, recommendations, or treatment to perpetrators of intimate partner violence, including participants who are self-referred or those who are court-ordered to be assessed or attend treatment.

(5) A program may administer other service programs in addition to domestic violence intervention treatment services; however, the domestic violence intervention treatment program for intimate partners must be considered a separate and distinct program from all other services the agency provides.

(6) Participants of the domestic violence intervention treatment program for intimate partners must not attend the same groups or sessions as participants of other programs or services as part of their domestic violence intervention treatment.

(7) The department requires new applicants who are in the process of applying to DSHS to provide domestic violence intervention assessments or any level of treatment to comply with the requirements in this chapter as of the day it is adopted.

(8) All programs affected by this rule that were certified under the chapter 388-60 WAC and have a current certification are to fully comply and provide written verification to the department with the requirements in this chapter no later than six months following the adoption of this chapter.

(9) All programs that have a current certification under the chapter 388-60 WAC and are in compliance with the requirements of chapter 388-60A WAC will be issued a new certification under chapter 388-60A WAC and will be certi-

fied to provide assessments and levels one, two, and three treatments.

(10) If a program certified under the previous chapter 388-60 WAC would like to add level four treatment or remove any service, they must make a written request to the department and await a determination by the department before providing any level four treatment or removing any service.

(11) Written requests can be emailed to CADVProgram@dshs.wa.gov or mailed to:

Department of social and health services
Domestic violence intervention treatment
program manager
P.O. Box 47510
Olympia, WA 98504

(12) All programs that were certified under the chapter 388-60 WAC and have a current certification may complete treatment for current participants under the rules of chapter 388-60 WAC until their discharge from treatment.

(13) New participants assessed by or participating in the program as of the adoption of this chapter 388-60A WAC must comply with the standards in this chapter.

ADVISORY COMMITTEE

NEW SECTION

WAC 388-60A-0035 The department's advisory committee—Who is on the advisory committee and what is its role? The department will establish and appoint a volunteer group to serve as the Washington state domestic violence intervention treatment program standards advisory committee.

(1) The role of the advisory committee is to:

(a) Advise the department regarding recommended changes to the program standards; and

(b) Provide technical assistance on program standards, implementation, training, certification, and recertification criteria.

(2) The advisory committee may include the following members:

(a) Up to four persons representing the perspective of survivors of domestic violence who must be chosen with input from the Washington State Coalition Against Domestic Violence (WSCADV);

(b) One person who identifies as a victim or survivor of domestic violence;

(c) Up to four persons representing the perspective of state-certified domestic violence intervention treatment programs who may be chosen with input from the Northwest Association of Domestic Violence Treatment Professionals (NWADVTP) or another currently active organization for domestic violence intervention treatment providers in Washington state;

(d) Up to four persons representing the perspective of adult misdemeanor probation and Washington state courts of limited jurisdiction who may be chosen with input from the Misdemeanor Corrections Association and the Washington State District and Municipal Court Judges Association;

(e) One person representing the department of corrections;

(f) One person representing the office of the administrator for the courts; and

(g) One person representing an academic and research perspective.

(3) Advisory committee members are appointed for up to two-year terms.

(4) The department may replace committee members at any time or if the member has two unexcused absences from two consecutive committee meetings.

(5) If funds are available, the department may reimburse advisory committee members for travel and meal expenses related to service on the committee.

(6) Advisory committee members must not receive any other compensation for service on the committee.

(7) The frequency of meetings for the advisory committee is at discretion of the department, as needed.

NEW SECTION

WAC 388-60A-0045 Program records requirements—What records must programs keep? (1) The program must keep all records associated with the provision of services for domestic violence assessment or intervention treatment for a minimum of seven years.

(2) In the event of a program or agency closure:

(a) The program must ensure all participants' records are kept and managed for at least seven years after the closure and destroy records in a manner that preserves confidentiality;

(b) The program must provide each participant currently being served with:

(i) Notice of the program closure or program cancellation at least thirty days before the date of closure or program cancellation;

(ii) Assistance with relocation for domestic violence intervention treatment; and

(iii) Information on how to access domestic violence intervention treatment records to which the participant is entitled;

(c) The closing program must notify the department that the program will either:

(i) Continue to retain and manage all participant records;

or
(ii) Arrange for the continued storage and management of all participant records;

(d) The closing program must notify the department in writing and include the name of the certified program storing and managing the records, provide the method of contact such as a telephone number or electronic address, and provide the mailing and street address where the records will be stored;

(e) Programs run by sole practitioners must name an emergency contact person who will be responsible for the program's records should the sole practitioner be unable to do so due to illness or death; and

(f) When any program or agency storing and maintaining participant records receives an authorized request for a

record, the record must be provided to the requester within a reasonable period of time.

NEW SECTION

WAC 388-60A-0055 Department record retention—What records must the department keep? The department must maintain the following information regarding certified domestic violence intervention treatment programs under its records retention schedule:

(1) A current record of all certified domestic violence intervention treatment programs; and

(2) A current record of programs that:

(a) Are in the process of applying for certification;

(b) Have been denied certification over the last twelve months;

(c) Have been notified that the department is revoking or suspending certification;

(d) Have had their certification revoked in the last twelve months; and

(e) Are being investigated.

CERTIFICATION AND APPLICATION REQUIREMENTS

NEW SECTION

WAC 388-60A-0100 Certification requirements—Must a program be certified to provide domestic violence assessments or treatment? (1) All programs providing domestic violence assessments or domestic violence intervention treatment services must submit an application and be certified by the department.

(2) A program must not provide any domestic violence assessments or services prior to certification.

(3) If there is a gap of time between program certification expiration and recertification approval, the program may request up to a thirty-day extension of their certification in order to continue providing services while their recertification application is processed by the department.

(a) It is at the discretion of the department if an extension will be granted for up to thirty days while waiting for recertification approval or denial; and

(b) The department's decision to deny an extension for up to thirty days is not subject to administrative review under chapter 388-02 WAC.

(4) To receive initial certification or to maintain certification the program must comply with all the requirements of chapter 388-60A WAC.

(5) Programs may request to be certified to offer one or any combination of the following domestic violence services:

(a) Domestic violence behavioral assessments;

(b) Levels one, two, and three domestic violence intervention treatment services; or

(c) Level four domestic violence intervention treatment services, which requires the program to meet additional education and documentation requirements as outlined in WAC 388-60A-0110(3).

NEW SECTION

WAC 388-60A-0105 Application process—How must a program apply for certification or recertification to provide domestic violence assessments or intervention treatment services? (1) Initial and recertification applications can be downloaded at <https://www.dshs.wa.gov/ca/domestic-violence/certification-process>. Completed applications, the required fee, and documentation must be mailed together to:

Department of social and health services
 Domestic violence intervention treatment
 program manager
 P.O. Box 47510
 Olympia, WA 98504

(2) A program cannot provide assessments or any level of direct treatment services to domestic violence participants without being certified by the department.

(3) Certification and recertification applications must include the application fee, be filled out completely, and contain all documentation required as indicated on the application in order to be processed by the department.

(4) The department will review the application within thirty days after an application is received to determine if the program meets the standards and certification requirements in this chapter.

(a) Programs may supplement their application as needed during the thirty days after the application is received and the department is reviewing it; and

(b) If a program does not meet the application requirements within the thirty days following submission, the program must re-apply for certification.

(5) After initial certification programs certified under this chapter must re-apply for certification every two years.

(6) The department must notify the applicant whether the program meets the standards set forth in this chapter.

(a) If a program meets the standards set forth in this chapter, the department will issue the program an approval letter and a certificate; or

(b) If a program does not meet the standards set forth in this chapter, the department will provide the program with:

(i) A written notice containing the reasons the department determined the program did not meet these standards; and

(ii) A list of the specific provisions of this chapter that the program failed to meet.

(7) Treatment programs have the right to an administrative hearing to contest the department's denial of their certification applications. Such hearings shall be governed by this chapter and chapter 388-02 WAC. Where provisions of this chapter and chapter 388-02 WAC conflict, the provisions of this chapter will control.

(8) Certified programs must report to the department any and all changes that occur following the initial or renewal certification process.

(9) The department may request a copy of additional disclosure statements or background inquiries if there is reason to believe that offenses specified under RCW 43.43.830 have occurred since the original application was submitted.

(10) The department may grant an exception or waiver from compliance with specific program certification requirements if the exception or waiver does not violate existing local, state, federal, or tribal law.

(a) To request an exception or waiver to a rule in this chapter, the program must:

(i) Submit the request in writing to the department;

(ii) Assure that any exception or waiver would not jeopardize the safety, health, or treatment of an individual; and

(iii) Assure that any exception or waiver would not impede fair competition of another service program;

(b) The department approves or denies an exception or waiver request in writing and requires the program to keep a copy of the decision; and

(c) The department's decision to deny an exception or waiver request is not subject to administrative review under chapter 388-02 WAC.

(11) The department considers each geographical location of a program an individual program and must certify each location separately.

(a) A program certified to provide assessments or any level of treatment may do so at an off-site location as defined in this chapter, without an additional certification for the off-site location;

(b) If the program provides assessments only, then the program is only required to have one certification and does not need a separate certification for each geographical location it serves; and

(c) If a program that has provided only assessments wants to add certification to provide any level of care, the program must certify each geographical location where any level of care will be offered unless it meets the 'off-site' definition in this chapter.

(12) The application fee for initial certification and recertification of a domestic violence intervention treatment program is one hundred twenty-five dollars.

(a) The department publishes the application fee for certification of domestic violence intervention treatment programs in the application packet; and

(b) If there is any change in the fee, the update will be done and made effective in July of each year.

NEW SECTION

WAC 388-60A-0110 Required documentation for certification and recertification—What must be included in an application to provide domestic violence assessments or treatment? (1) For programs applying for initial certification or recertification the program's director must submit the following documentation with the program's application:

(a) A written statement signed by the program's director that the program complies with the standards contained in this chapter;

(b) A copy of the current business license that authorizes the program, or its governing agency, to do business in Washington state at the physical address indicated on the application;

(c) A list of any off-site locations where the program will be providing services;

- (d) A list of all direct treatment staff at the program;
- (e) Results of current criminal history background checks conducted by the Washington state patrol for all current direct treatment program staff;
- (i) If the program staff has lived outside of the state of Washington in the last ten years, then a background check that covers each state they lived in prior to Washington for the last ten years must be included with the application; and
- (ii) The results of an FBI or other national criminal background check can be used in place of the Washington state patrol check if it documents the state of Washington, and any other state they lived in for the past ten years was part of the background check search;
- (f) An attestation for each current paid or volunteer staff person, documented in the application, whether the staff person has ever been a party to any civil proceedings involving domestic violence or crimes of moral turpitude;
- (g) If the staff person has been party to any civil proceedings involving domestic violence or crimes of moral turpitude, the application must also include the legal findings of each incident along with the staff person's written explanation (see WAC 388-60A-0210 (2)(b));
- (h) Proof that each direct treatment staff is currently registered or licensed as a counselor with the Washington state department of health; and
- (i) Written documentation that the program maintains cooperative and collaborative relationships with agencies providing services related to domestic violence which must include, at a minimum, all of the following:
 - (i) One item of documentation showing that the program has established and continues to maintain a cooperative relationship with another local program or agency involved in the provision of direct or ancillary services related to domestic violence including, but not limited to, probation services, legal services, a domestic violence intervention treatment program, or a victim services program;
 - (ii) One item of documentation showing that the program regularly attends and participates in a local domestic violence task force, intervention committee, coordinated community response group, or workgroup if one exists in their community;
 - (iii) One item of documentation showing that the program has a collaborative relationship, either electronic or in person, with another Washington state certified domestic violence intervention treatment program which includes:
 - (A) Written documentation of regularly scheduled opportunities for confidential case staffing; and
 - (B) Written documentation of regularly scheduled opportunities for collaboration in the delivery of domestic violence intervention treatment services and procedures for victim safety (the program can find a current list of certified domestic violence intervention treatment programs in the state of Washington online at <https://www.dshs.wa.gov/ca/domestic-violence/domestic-violence-perpetrator-treatment>); and
 - (iv) A current list of all the local domestic violence victim services programs in the program's area as reasonably available.
- (2) If applying to provide any level of domestic violence intervention treatment services the program must include the

following on their application, which must be approved by the department prior to certification:

- (a) An explanation of the program's evidence-based or promising practice treatment modalities (see WAC 388-60A-0310(3)); and
- (b) The program's methods of treatment.
- (3) In order to apply for level four domestic violence intervention treatment, the program must also submit documentation of the supervisor level direct treatment staff who will be responsible for facilitating group and individual sessions for participants in level four treatment.
 - (a) The supervisor must document an initial six hours of training, approved by DSHS in providing level four treatment; and
 - (b) For recertification, the supervisor must document four hours every twenty-four months of continuing education, approved by DSHS in providing level four treatment, focused on criminogenic factors, risk issues, psychopathy, and related topics.
 - (4) All programs must submit the applicable required policies and procedures as outlined in WAC 388-60A-0115, which must be approved by the department prior to initial certification.
 - (5) If the program was certified prior to the adoption of chapter 388-60A WAC, the program must submit the applicable policies and procedures with their first recertification application after the adoption of these rules.
 - (6) For programs applying for recertification, the program must also submit:
 - (a) A statement of qualifications for any staff added since the last certification period (form #10-210) which can be found online at <https://www.dshs.wa.gov/ca/domestic-violence/certification-processor> requested by mail from the address listed in WAC 388-60A-0105(1);
 - (b) An update of continuing education hours for each direct treatment staff (form #14-544) which can be found online at <https://www.dshs.wa.gov/ca/domestic-violence/certification-processor> requested by mail from the address listed in WAC 388-60A-0105(1); and
 - (c) If the program is applying to provide a new domestic violence intervention service on their recertification application, then the program must also submit the following with their application:
 - (i) The applicable policies and procedures which have not already been approved, but are necessary to provide the new service(s) (see WAC 388-60A-0115); and
 - (ii) If the program is applying to provide a new level of treatment the following must be submitted and approved by the department prior to providing the service:
 - (A) A description of the program's evidence-based or promising practice treatment modalities; and
 - (B) The program's methods of treatment.

NEW SECTION

WAC 388-60A-0115 Policies and procedures—Which policies and procedures must be approved by the department before I may provide domestic violence assessments or treatment services? (1) A domestic violence intervention treatment program must keep updated policies

and procedures that have been approved by the department prior to initial certification. The policies and procedures must be readily available at all times to all staff and volunteers either in electronic or paper form.

(2) Programs that were certified prior to the implementation of chapter 388-60A WAC must submit policies and procedures to DSHS with their program's first re-certification application after the adoption of these rules.

(3) For programs applying to provide assessments, the policies and procedures must be individualized to the program and include:

- (a) Program records under WAC 388-60A-0045;
- (b) Facility requirements under WAC 388-60A-0120;
- (c) Quality management under WAC 388-60A-0125;
- (d) Personnel records under WAC 388-60A-0200;
- (e) Supervision and supervisor requirements under WAC 388-60A-0250 and 388-60A-0260;
- (f) Referral screening under WAC 388-60A-0300;
- (g) Victim safety under WAC 388-60A-0325;
- (h) Victim confidentiality under WAC 388-60A-0330;
- (i) Participant confidentiality under WAC 388-60A-0360;
- (j) Releases of information under WAC 388-60A-0365;
- (k) Behavioral assessment and interview criteria under WAC 388-60A-0400;

(4) For programs certified or applying to provide any level of domestic violence intervention treatment, the policies and procedures must be individualized to the program and at a minimum cover the following:

- (a) Program records under WAC 388-60A-0045;
- (b) Facility requirements under WAC 388-60A-0125;
- (c) Quality management under WAC 388-60A-0130;
- (d) Personnel records under WAC 388-60A-0200;
- (e) Supervision and supervisor requirements under WAC 388-60A-0250 and 388-60A-0260;
- (f) Referral screening under WAC 388-60A-0300;
- (g) Treatment focus under WAC 388-60A-0310;
- (h) Group treatment under WAC 388-60A-0315;
- (i) Treatment practices under WAC 388-60A-0320;
- (j) Victim safety WAC under 388-60A-0325;
- (k) Victim confidentiality under WAC 388-60A-0330;
- (l) Participant requirements under WAC 388-60A-0345;
- (m) Co-occurring treatment under WAC 388-60A-0350;
- (n) Participant confidentiality under WAC 388-60A-0360;
- (o) Releases of information under WAC 388-60A-0365;
- (p) Participant contracts under WAC 388-60A-0370;
- (q) Treatment planning under WAC 388-60A-0405;
- (r) Minimum treatment periods and requirements under WAC 388-60A-0420;
- (s) Re-offenses and non-compliance during treatment under WAC 388-60A-0425; and
- (t) Discharging participants under WAC 388-60A-0435;

(5) For programs certified or applying to provide levels one, two, and three treatment, the policies and procedures must be individualized to the program and also cover the following:

- (a) Levels one, two and three placement criteria under WAC 388-60A-0410(1) through WAC 388-60A-0410(3);

(b) Levels one, two, and three required cognitive and behavioral changes participants must make in treatment under WAC 388-60A-0415(1);

(c) Completion criteria and core competencies for levels one, two, and three treatments under WAC 388-60A-0430;

(6) For programs certified or applying to provide level four treatment the policies and procedures must be individualized to the program and also cover the following:

(a) Level four placement criteria under WAC 388-60A-0410(4);

(b) Level four required skills and behavioral changes under WAC 388-60A-0415(2); and

(c) Completion criteria for level four treatment under WAC 388-60A-0430(3).

NEW SECTION

WAC 388-60A-0120 Facility requirements—What facility requirements must a program meet for the space where domestic violence intervention assessments or treatment services are provided? Each program certified to provide assessments or any level of care must ensure that its treatment space is suitable for the purposes intended.

(1) For programs that offer any level of treatment:

(a) The group room must easily accommodate fourteen people, not counting space taken by staff desks, file cabinets or similar items; or

(b) If the program regularly and consistently holds groups smaller than twelve participants, the group room must be able to comfortably accommodate the size of the group and facilitator based on attendance records.

(2) The program must ensure that the facility space:

(a) Is not a personal residence;

(b) Is accessible to an individual with a disability, and if a program operates in a historic building or a building that was constructed before current ADA standards, the program must inform potential participants of barriers to accessibility and offer the participant a referral to programs that are ADA accessible when applicable;

(c) Has a reception area separate from treatment areas;

(d) Ensures confidentiality and anonymity for participants including:

(i) Having window coverings for reception, group, and assessment spaces; and

(ii) Having signage outside the building that does not indicate domestic violence treatment;

(e) Has adequate private space for personal consultation with an individual, staff charting, and therapeutic activities, as appropriate;

(f) Has secure and locked storage of active and closed confidential participant and victim records which are not accessible to participants or the public;

(g) Has separate, secure storage of poisonous external chemicals and caustic materials;

(h) Has evacuation routes with highlighted emergency exits posted in each room used by participants or staff;

(i) Has a restroom available to participants and staff during business hours; and

(j) Has sufficient ventilation and temperature control to facilitate assessments or groups comfortably.

(3) If the program operates in the same building or in very close proximity to a victim services program, the domestic violence intervention treatment program must conduct assessments and groups sessions at least three hours apart from any victim services.

(4) A different agreement in regards to proximity and day or time allowances or restrictions may supersede the requirements of the standard in WAC 388-60A-0120(3) when it is outlined by a signed memorandum of understanding between the treatment program and the victim services program.

Exception: Domestic violence intervention treatment services being delivered off-site, such as in jails or prisons are not subject to the facility standards in this section.

NEW SECTION

WAC 388-60A-0125 Quality management—What are the minimum treatment outcomes for participants and how must a program measure staff and treatment effectiveness? Each treatment program certified to provide assessments or any level of domestic violence intervention treatment must document program specific quality management procedures to increase staff and program treatment effectiveness.

(1) Programs providing assessments or any level of domestic violence intervention treatment must document their quality management in writing and at a minimum include:

(a) How the program monitors compliance with the rules in this chapter, at a minimum every six months, including the supervisor's direct observance of groups when applicable and a review of assessments and participants' records for compliance with this chapter and the program's policies and procedures;

(b) How the program reviews and improves its cultural competency, at a minimum on an annual basis;

(c) How the program will provide services to participants who require sign language or interpretation; and

(d) How the program regularly attends and participates in a local domestic violence task force, intervention committee, or workgroup in their service area.

(2) Programs providing any level of domestic violence intervention treatment must also document in writing:

(a) The use of evidence based or promising practices;

(b) A copy of the program's treatment outline along with any handouts, exercises, or instructions, as a guide for the facilitators of groups;

(c) How the program coordinates with local victim services;

(d) How the program collaborates with at least one other certified domestic violence intervention treatment program, either electronically or in person, including written documentation of regularly scheduled opportunities for:

(i) Confidential case staffing;

(ii) Collaboration in the delivery of domestic violence intervention treatment services; and

(iii) Procedures for victim safety;

(e) The policies and procedures the program has in place regarding complaints and grievances; and

(f) How the program collects a confidential evaluation of treatment outcomes for treatment participants which must outline how:

(i) Each participant is given a treatment outcomes evaluation at discharge and asked to complete it at that time. The treatment outcomes form is found online at <https://www.dshs.wa.gov/ca/domestic-violence/certification-processor> or may be requested by mail from:

Domestic violence intervention treatment
program manager
Department of social and health services (DSHS)
P.O. Box 45710
Olympia, Washington 98504-5710

(ii) The confidential results of the treatment outcomes evaluation is sealed by the participant after it is completed and submitted by the program to DSHS by United States mail by the 15th day of the month, for the previous quarter;

(A) The first quarter is January 1 to March 31, with the results due to DSHS by April 15;

(B) The second quarter is April 1 to June 30, with the results due to DSHS by July 15;

(C) The third quarter is July 1 to September 30, with the results due to DSHS by October 15;

(D) The fourth quarter is October 1 to December 31, with the results due to DSHS by January 15;

(g) If the program fails to submit quarterly treatment outcome evaluation data to the department by the designated deadlines, the department may require corrective actions, initiate an investigation, or take action on the program's certification status; and

(h) If the survivor chooses to provide feedback, the program will provide them with a treatment outcomes evaluation for survivors regarding their experience of the participant's behaviors before, during treatment, and at discharge;

(i) The treatment outcomes form for survivors is found at <https://www.dshs.wa.gov/ca/domestic-violence/certification-processor> or may be requested by mail from the address listed in this subsection; and

(ii) The survivor may give the outcomes evaluation to the program to be kept confidential and sent to DSHS quarterly, or they may send it directly to DSHS if they choose by United States mail to the address listed in this subsection or electronically to CADVProgram@dshs.wa.gov.

PROGRAM CHANGES

NEW SECTION

WAC 388-60A-0130 Adding to existing certification—How must a program add assessments or a level of treatment to an existing certification? (1) To add certification to provide any service(s) to an existing certified domestic violence intervention program, the program must submit an abbreviated application that is signed by the program's director.

(2) The abbreviated application to add services can be downloaded at <https://www.dshs.wa.gov/ca/domestic-violence/certification-processor> requested by mail from:

Domestic violence intervention treatment
program manager
Department of social and health services (DSHS)
P.O. Box 45710
Olympia, Washington 98504-5710

(3) Completed applications and required documentation can be emailed to CADVProgram@dshs.wa.gov or mailed to the address in this section.

(4) The application must be signed, dated, completed entirely, and must include the following:

(a) The name of the supervisor providing management and supervision of services;

(b) The physical address of the program where the new requested service(s) will be provided;

(c) A copy of the program's policies and procedures applicable to the new service(s);

(d) A copy of the program's treatment topics and evidence-based or promising practice treatment modality related to the new service(s), if applicable; and

(e) Updated quality management procedures to include the new service(s).

(5) The department must approve the application for the provision of the new requested service(s) before the program can provide the service(s).

(6) The department may conduct an on-site review prior to approving the new requested service(s) or issuing a new certificate that includes the added service(s).

NEW SECTION

WAC 388-60A-0135 Change in ownership—What must be sent to the department when a program is sold or changes ownership? (1) When a certified domestic violence intervention treatment program changes ownership, the department requires:

(a) A new certification application (see WAC 388-60A-0105 through WAC 388-60A-0115) including all required documentation;

(b) Payment of the certification application fee (see WAC 388-60A-0120(6)); and

(c) A statement regarding the disposition and management of all participant and victim records in accordance with applicable state and federal laws.

(2) The program must receive a new certification under the new ownership before providing any domestic violence assessments or any level of domestic violence intervention treatment services.

NEW SECTION

WAC 388-60A-0140 Change of address—What must be sent to the department when a program changes the physical location of where they provide assessments or groups? (1) When a certified domestic violence intervention treatment program relocates to another address, the department requires the program to submit a completed change of address form found online at <https://www.dshs.wa.gov/ca/domestic-violence/certification-processor> requested by mail from:

Domestic violence intervention treatment
program manager
Department of social and health services (DSHS)
P.O. Box 45710
Olympia, Washington 98504-5710

(2) The program must provide the department with:

(a) The effective date and physical address of the program's new location;

(b) Notification of any changes to direct service staff members or supervisor(s), who must receive department approval before providing any direct client services;

(c) A statement regarding the management of all participant and victim records in accordance with applicable state and federal laws; and

(d) An attestation that the new location complies with facility requirements under WAC 388-60A-0125.

(3) The program must receive a certification for the new location's address before providing any assessments or any level of domestic violence intervention treatment service at that address.

(a) An exception may be granted at the discretion of the department if the program had to move suddenly due to an emergency or danger in the previous facility; and

(b) The department may conduct an on-site review prior to approving or issuing a new certificate for the new location.

DIRECT TREATMENT STAFF REQUIREMENTS

NEW SECTION

WAC 388-60A-0200 Personnel records—What personnel records must a program keep for direct service staff? (1) The program must keep records concerning all personnel, including paid and volunteer staff.

(2) Personnel records must contain the following information:

(a) Their most recent Washington state, FBI or other national background check results, which must have been conducted within the last twenty-four months;

(b) A copy of their current registration or license as a counselor with the Washington state department of health;

(c) A copy of all diplomas; and

(d) A copy of the continuing education and training certificates earned over the last twenty-four months.

(3) For programs with more than one direct service staff, the personnel record must also contain documentation of a staff orientation to the program and include:

(a) An overview of the program's philosophy regarding domestic violence intervention treatment;

(b) A review of the program's treatment outline;

(c) A review of the program's policies and procedures;

(d) A review of the state's domestic violence laws (see WAC 388-60A-0340);

(e) A job description, which is signed by the employee or volunteer; and

(f) The date of hire and the date of termination if applicable.

NEW SECTION

WAC 388-60A-0210 Minimum staff qualifications—What staff qualifications must a program document for direct service staff? (1) Direct treatment staff who are currently recognized by the department as a trainee, staff, or supervisor at a certified program under chapter 388-60 WAC will be granted the same designation by the department with the adoption of chapter 388-60A WAC.

(2) Each treatment program certified for assessments or any level of domestic violence intervention treatment must ensure that all staff with direct treatment contact with participants be:

(a) Currently licensed or registered as counselors as required under chapter 18.19 RCW;

(b) Free of criminal convictions involving domestic violence or moral turpitude;

(i) Direct service staff who have convictions involving crimes of domestic violence or moral turpitude may submit a written explanation of their convictions and a request for an exception to this requirement;

(ii) The department will review the explanation and request for an exception on a case-by-case basis, and the decision to grant or deny such a request will be at the department's discretion; and

(iii) This discretionary decision is not subject to an administrative hearing appeal as outlined under chapter 388-02 WAC; and

(c) In good standing with DSHS:

(i) A direct treatment staff person whose actions have been the subject of a DSHS investigation and have resulted in the denial, suspension, or revocation of a program's certification status is subject to a review by DSHS to determine if the direct treatment staff person is considered to be in good standing;

(ii) The department will review the status of a direct service staff on a case-by-case basis and decisions for designation and recognition of the direct service staff person as a trainee, staff, or supervisor will be at the discretion of the department; and

(iii) This discretionary decision is not subject to an administrative hearing appeal as outlined under chapter 388-02 WAC.

(3) Each direct treatment staff person must have a bachelor's degree from an accredited university in counseling, psychology, social work, or similar social services field.

(a) The department may grant an exception or waiver from compliance with this requirement if the exception would not violate an existing local, state, federal, or tribal law;

(b) In order to qualify for an exception, the employee must possess year-for-year professional level experience equivalent to a related bachelor's degree in counseling, psychology, social work, or similar social service field and the department determines this equivalency at the discretion of the DSHS program manager responsible for monitoring domestic violence intervention treatment programs;

(c) To request an exception to a rule in this chapter, the program must:

(i) Submit the request in writing to the department;

(ii) Assure that the exception would not jeopardize the safety, health, or treatment of an individual; and

(iii) Assure that the exception would not impede fair competition of another service agency;

(d) The department approves or denies an exception request in writing and requires the program to keep a copy of the decision; and

(e) The department's decision to deny an exception request is not subject to administrative review under chapter 388-02 WAC.

(4) Prior to providing any direct treatment services to program participants, each direct treatment staff person must have completed:

(a) A minimum of thirty hours of domestic violence training from an established domestic violence victim or survivor services program, as defined in this chapter;

(b) A portion, but not all of the victim training hours may be accrued through training from the Washington State Coalition Against Domestic Violence and those trainings may be attended in person or online;

(c) A minimum of thirty hours of training on the provision of domestic violence intervention assessment and services, provided by an established and certified domestic violence intervention treatment services program or other organization that has been approved by the department to provide the training and must include:

(i) An orientation to the treatment program if the training is through a certified program;

(ii) An overview of all applicable policies and procedures;

(iii) Instructions on how to conduct behavioral assessments;

(iv) Instructions on how to facilitate groups; and

(v) Instructions regarding the implementation, administration, interpretation, and utilization of domestic violence offender risk assessment tools;

(A) If located within Washington state, the domestic violence intervention treatment program must be certified and meet the standards as outlined in this chapter; and

(B) If located out-of-state the domestic violence intervention treatment program must meet the standards outlined in this chapter and in chapter 26.50 RCW; and

(d) Direct service staff must complete all sixty hours of required training before the employee may apply for trainee status and begin to provide any direct services to participants and any work experience accrued prior to completion of the sixty hours of training will not count toward any requirement for work experience.

NEW SECTION

WAC 388-60A-0220 Staff disclosures—What disclosures must direct service staff provide to participants seeking assessments or who are in the program? (1) Prior to conducting an assessment or providing any level of treatment, each direct service treatment staff must document in the participant's record that the participant was provided with the direct treatment staff's counselor disclosure which must include:

(a) The name of the direct service treatment staff;

(b) The name of the domestic violence intervention treatment program and the program's business address and telephone number;

(c) The direct service staff member's Washington state credential number;

(d) The direct service staff member's education, training, and experience;

(e) The direct service staff member's designation by the department as a trainee, staff, or supervisor;

(f) The name and description of the types of counseling or interventions provided by the direct service staff, including the treatment approach, methods, and techniques employed in their domestic violence intervention treatment program;

(g) Fee information, including:

(i) The cost for each assessment, group or individual counseling session;

(ii) Billing practices including any advance payments and refunds; and

(iii) A statement that participants are not liable for any fees or charges for services rendered prior to receipt of the disclosure statement;

(h) The limits of confidentiality under RCW 18.19.180;

(i) Disclosure of the direct service staff's supervisory or consultation agreement, including the supervisor's contact information, if they are not the program's supervisor or if they are receiving supervision from another practitioner;

(j) Disclosure that the direct service staff person is not credentialed to diagnose mental disorders or to conduct psychotherapy as defined in WAC 246-810-010(14) if it is outside their scope of practice;

(k) The following information regarding credentialed counselors:

(i) Counselors practicing counseling for a fee must be credentialed with the department of health for the protection of the public health and safety;

(ii) Credentialing of an individual with the department of health does not include a recognition of any practice standards, nor necessarily imply the effectiveness of any treatment;

(iii) The purpose of the Counselor Credentialing Act, chapter 18.19 RCW, which is to:

(A) Provide protection for public health and safety; and

(B) Empower the citizens of the state of Washington by providing a complaint process against those counselors who would commit acts of unprofessional conduct; and

(iv) A reference of the acts of unprofessional conduct in RCW 18.130.180 and the name, address, and contact telephone number within the department of health for complaints; and

(l) Signature and date blocks for the direct service staff and participant, including an attestation that the participant has read, understands, and was provided with the required disclosure statement.

NEW SECTION

WAC 388-60A-0230 Trainee requirements—What qualifications must the program document for direct treatment staff designated as a "trainee" by the department? (1) A trainee is a direct treatment staff person who has

completed the sixty hours of domestic violence victim and perpetrator trainings as outlined in WAC 388-60A-0210 but has not yet accrued the minimum hours of experience required at the staff level.

(2) A trainee may serve as a co-facilitator of groups, but must not have sole responsibility for the group at any time.

(3) A trainee must not have sole responsibility for conducting an interview and assessment, for terminating a participant from treatment, or for writing the participant's discharge summary.

NEW SECTION

WAC 388-60A-0240 Staff requirements—What qualifications must the program document for direct treatment staff designated as "staff" by the department?

(1) To qualify at the staff level the employee must meet all the qualifications at the trainee level and also have accrued and documented:

(a) A minimum of fifty hours of supervised, direct treatment services to domestic violence participants in a certified domestic violence intervention treatment program or out of state equivalent, which includes documentation of the staff person's observation of at least six certified domestic violence intervention treatment groups including debriefings with the facilitator; and

(b) A minimum of fifty hours of experience working with victims of domestic violence.

NEW SECTION

WAC 388-60A-0250 Supervisor requirements—What qualifications must the program document for direct treatment staff designated as a "supervisor" by the department?

(1) To qualify at the supervisor level, the employee must meet all the qualifications required for the staff level and also have accrued and documented:

(a) A minimum of two years of experience in facilitating domestic violence intervention treatment groups at a certified program;

(b) At least two hundred and fifty hours of direct treatment contact with participants in a certified domestic violence intervention treatment program; and

(c) At least one hundred hours of experience working with victims of domestic violence.

(2) A supervisor must have a master's degree from an accredited university in counseling, psychology, social work, or similar social services field.

(3) The department's program manager will review requests for an exception to this requirement on a case-by-case basis.

(a) An exception for the master's degree requirement must not be given to a direct treatment staff member who has already been given an exception for the bachelor's degree;

(b) In order to qualify for an exception, the employee must possess year-for-year professional level experience equivalent to a related master's degree in counseling, psychology, social work, or similar social services field and the department determines this equivalency at the discretion of the DSHS program manager responsible for monitoring domestic violence intervention treatment programs;

(c) To request an exception to a rule in this chapter, the program must:

- (i) Submit the request in writing to the department;
 - (ii) Assure that the exception would not jeopardize the safety, health, or treatment of an individual; and
 - (iii) Assure that the exception would not impede fair competition of another service agency;
- (d) The department approves or denies an exception request in writing and requires the program to keep a copy of the decision; and
- (e) The department's decision to deny an exception request is not subject to administrative review under chapter 388-02 WAC.

NEW SECTION

WAC 388-60A-0260 Supervisor responsibilities—What responsibilities must the supervisor document for the program? (1) Each program certified for assessments or any level of domestic violence intervention treatment must have at least one person providing supervision to direct treatment staff.

(2) Supervision must be documented in the direct service staff's personnel file and follow the program's policies and procedures regarding supervision. At a minimum this must include:

- (a) At least once every six months, the supervisor must directly observe all treatment staff who are at the trainee or staff level and who provide direct treatment services such as assessments or any level of treatment;
- (b) At least once every six months the supervisor must review a sample of each direct treatment staff's assessments and participant's records as applicable for compliance with program policies and the WAC standards found in this chapter;
- (c) A program's supervisor must document their observations and feedback for the program trainee or staff member and include it in the employee or volunteer's personnel file; and
- (d) Programs that consist of one employee, who is the supervisor, are not required to document group observations or file reviews.

(3) A supervisor may be located either on or offsite.

(4) If no other direct treatment staff besides the supervisor possesses at least two hundred fifty hours of experience providing direct treatment services to participants, then the supervisor must be present on site at all times that direct treatment services are being provided.

(5) The supervisor is responsible for reporting critical incidents, as defined in this chapter to the department within one business day.

(6) The supervisor must provide the department with documentation of the incident and the actions the program has taken as a result of the incident.

(7) If a program has more than one supervisor, the program must either:

- (a) Designate a lead supervisor to fulfill the responsibilities of this section; or
- (b) Document in writing how the responsibilities in this section will be shared among the supervisors.

NEW SECTION

WAC 388-60A-0270 Continuing education—What continuing education requirements must the program document for direct service staff? (1) Each treatment program certified for assessments or any level of domestic violence intervention treatment must ensure that all staff having direct treatment contact with participants documents their continuing education hours.

(2) Each direct treatment staff must complete a minimum of twenty hours of continuing professional education each year after the program is certified, or each year after the staff person is added to the staff list.

(3) No more than five of those hours may be obtained by attending "in-house" training.

(4) Of the twenty annual hours of continuing education, each direct treatment staff must complete a minimum of nine hours in victim training which includes, but is not limited to, any combination of the following topics:

- (a) Domestic violence victim advocacy;
- (b) Safety planning with domestic violence survivors;
- (c) Legal or financial options for domestic violence survivors;
- (d) Information on no contact orders or protective orders;
- (e) Housing options for domestic violence survivors; or
- (f) Other trainings that directly relate to domestic violence survivors or victim advocacy.

(5) Of the twenty annual hours of continuing education, each direct treatment staff must complete a minimum of one hour related to suicide prevention.

(6) Of the twenty annual hours of continuing education, each direct treatment staff must complete a minimum of ten hours in domestic violence intervention, perpetrator, or batterer's treatment. Any combination of the following topics may also be included with the remaining hours if they are submitted with an explanation of how the training relates to domestic violence intervention treatment:

- (a) Mental health;
- (b) Substance use, gambling or other addictions;
- (c) Sexism;
- (d) Racism;
- (e) LGBTQ culture or homophobia;
- (f) Trauma informed treatment;
- (g) Complex trauma;
- (h) De-escalation in a treatment setting;
- (i) Group facilitation;
- (j) Domestic violence offender behaviors;
- (k) Experiential treatment;
- (l) Behavioral assessments;
- (m) Cognitive behavioral treatment;
- (n) Motivational interviewing;
- (o) Forensic counseling;
- (p) Dialectical behavioral treatment;
- (q) Child abuse;
- (r) Sexual assault; or
- (s) Other trainings that directly relate to providing domestic violence intervention treatment.

(7) The recommended format for all trainings is live and in-person, however direct treatment staff may obtain continuing professional education online when approved in writing by the program's supervisor.

(8) Supervisors who provide level four treatment must also complete and submit four hours of department approved continuing education every two years following the initial six-hour training in level four treatment.

(a) The four hours of training for level four treatment may be included in the forty hours of continuing education training hours.

(b) The continuing education hours for level four treatment must include training on criminogenic factors, risk issues, psychopathy, and related topics.

(9) The direct treatment staff must document all continuing education training hours on department approved forms.

(a) The form must be accompanied by completion certificates, course or workshop outlines, and the supervisor's signature; and

(b) The program must submit the form and accompanying documentation to the department at the time the program applies for recertification (see WAC 388-60A-0110).

NEW SECTION

WAC 388-60A-0280 Adding direct treatment staff—What documentation must a program submit to the department to add a new direct service staff person, or request designation as a staff or supervisor for existing direct service staff, during a certification period? (1) A new direct service staff person or an existing person requesting a change in staff level must be approved by the department as a trainee, staff, or supervisor before providing any direct services such as assessments or any level of treatment.

(2) The certified program must submit an application to add or change direct service staff which can be obtained online at <https://www.dshs.wa.gov/ca/domestic-violence/certification-processor> requested by mail from:

Domestic violence intervention treatment
program manager
Department of social and health services (DSHS)
P.O. Box 45710
Olympia, Washington 98504-5710

(3) With the application, the program must submit documentation to the department which proves that the staff meets the minimum qualifications for all treatment staff stated in WAC 388-60A-0210 in addition to the staff level being requested as stated in WAC 388-60A-0230 through WAC 388-60A-0250.

PROGRAM STANDARDS

NEW SECTION

WAC 388-60A-0300 Referral screening—May a program screen referrals in order to accept or deny services to potential participants? (1) A treatment program has the authority to accept or reject any referral for assessment or enrollment in its program.

(2) The program must base acceptance and rejection of a participant on written criteria the program has developed to screen potential participants.

(3) A treatment program may impose any relevant and appropriate conditions on participants that the program deems appropriate for the success of treatment.

NEW SECTION

WAC 388-60A-0305 Nondiscrimination—What are the nondiscrimination criteria with which a program must comply? (1) A domestic violence intervention treatment program may not discriminate against any participant based on:

- (a) Race;
 - (b) Ethnicity;
 - (c) National origin;
 - (d) Age;
 - (e) Gender or gender identity;
 - (f) Disability;
 - (g) Religion;
 - (h) Marital status or living arrangements;
 - (i) Educational attainment;
 - (j) Language spoken or limited language proficiency;
 - (k) Socio-economic status; or
 - (l) Sexual orientation.
- (2) Program materials, publications, and audio-visual materials must be culturally aware, sensitive, and nondiscriminatory.

NEW SECTION

WAC 388-60A-0310 Treatment focus—What requirements must a program focus on during treatment and what methods of treatment may they use? (1) A domestic violence intervention treatment program certified for any level of treatment must document in each participant's record that the program's treatment focus is primarily on increasing victim safety by ending the participant's violence and holding the participant accountable for their abusive behaviors.

(2) The program must document in the participant's record:

- (a) The dates, times, and topics covered for each session; and
 - (b) The behavioral progress of the participant in reaching the objectives or goals as outlined in their treatment plan.
- (3) The program must use forensic counseling skills in facilitating evidence-based or promising practices that may include, but are not limited to:

- (a) Cognitive-behavioral approaches;
 - (b) Motivational interviewing or similar client-centered approaches;
 - (c) Trauma-informed behavioral interventions;
 - (d) Strength-based strategies; or
 - (e) Positive behavioral reinforcement strategies.
- (4) The program must base all treatment on strategies and philosophies that do not blame the victim or imply that the victim shares any responsibility for the abuse which occurred.

(5) The primary goal of a domestic violence intervention treatment program must be to increase the victim's safety by:

- (a) Individualizing treatment for each participant with unique goals, the modality of treatment, and adequate and

appropriate intervention to address the participant's high risk factors and needs as outlined in their treatment plan; and

(b) Holding the participant accountable for changing the participant's patterns of abusive thinking and behaving.

NEW SECTION

WAC 388-60A-0315 Group treatment—What standards must programs follow regarding the provision of group treatment? (1) Each treatment program certified for any level of treatment must adhere to the following standards regarding group treatment:

(a) Participants must attend group sessions on a weekly basis;

(b) The group sessions must be single gender;

(c) Participants must be given the choice to attend the group they feel most comfortable in when gender identity is a factor;

(d) The group size is limited to a maximum of twelve participants, and a minimum of two participants;

(e) On a short-term basis the program may accept a participant into their domestic violence intervention treatment program even if the program lacks sufficient participants to constitute a group;

(f) Group sessions with four to twelve participants in attendance must be at least ninety minutes in length;

(g) Group sessions with three or fewer participants in attendance must be at least sixty minutes in length;

(h) Group sessions must be closed to all persons other than participants, group facilitators, and others specifically invited by the group facilitators including, but are not limited to:

(i) Professionals in related fields;

(ii) A research scholar or state of Washington evaluator;

(iii) Advocates from victim service agencies;

(iv) Persons offering interpretation services for the deaf and/or hearing impaired or language translation or interpretation; and

(v) Interns, trainees, or others who bring specific information applicable to the group; and

(i) Any person attending the group as specified under this section must sign a confidentiality agreement of which the program must keep a record.

NEW SECTION

WAC 388-60A-0320 Treatment practices—How must a program approach treatment and what must happen if it is determined that a participant should move into a different level of treatment? Each treatment program certified for any level of domestic violence intervention treatment must:

(1) Provide forensic counseling, using evidence-based or promising practices in all levels of treatment;

(2) Require participants to attend weekly group or individual sessions, depending on their level of treatment and individual treatment plan;

(3) Use a trauma-informed approach in treatment;

(4) Provide treatment that meets the individual needs of participants based on their ongoing assessment information,

motivations for abuse, and motivations for creating healthy relationships;

(5) Document the required cognitive and behavioral changes required by participants in treatment as cited in WAC 388-60A-0415;

(6) Submit compliance reports and relevant information to the courts or appropriate probation office when requested by the referral source or court when applicable;

(7) When increasing or decreasing the level of treatment of a participant the program must document:

(a) Updated assessment information;

(b) A change in treatment needs;

(c) Justification for the treatment level change;

(d) Written approval from the program's supervisor; and

(e) An updated treatment plan; and

(8) When a program changes the level of treatment for a participant the program must notify the participant and the referring agency, when applicable.

(a) The program must document if the referring agency has opted out of receiving treatment change notifications and if so, it must be documented in the participant's file; and

(b) If the program cannot reach the recipient the program must document their reasonable efforts to reach them.

NEW SECTION

WAC 388-60A-0325 Victim safety—What steps must programs take in order to help increase victim safety? (1) Each treatment program certified for assessments or any level of treatment must adequately consider the safety of the victims, current partners, and children of the participants receiving assessments or who are enrolled in the treatment program.

(2) All victim contact initiated by the program must be done by a staff or supervisor level employee as defined in WAC 388-60A-0240 and WAC 388-60A-0250, unless the program contracts with a victim services agency to contact victims.

(3) Programs that are certified for assessments or any level of treatment must take the following steps, as applicable to help increase victim safety:

(a) Notify the victim of each program participant before completing the assessment that the participant is being seen by the certified program for an assessment to determine:

(i) If domestic violence intervention treatment is appropriate for the participant, and if so, what level of treatment the participant will start in at the program; and

(ii) If applicable, what other treatments may be required or recommended as part of the participant's treatment plan;

(b) Inform victims about emergency and safety planning, outreach, advocacy, and other applicable services offered by a domestic violence victim services program in their community;

(c) Notify the victim of each program participant within fourteen days of the participant being accepted or denied entrance to the program that the participant has enrolled in or has been rejected for treatment services; and

(d) When the participant has been accepted into treatment, give victims a brief description of the domestic vio-

lence intervention treatment program including all of the following:

(i) The primary objective of the domestic violence intervention treatment program to help increase the safety of the victim and children as well as holding the participant accountable;

(ii) The core competencies and minimum completion criteria for the participant in treatment;

(iii) The fact that the victim is not expected to do anything to help the participant complete any treatment program requirements;

(iv) The limitations of domestic violence intervention treatment; and

(v) The program's direct treatment staff's responsibility regarding mandated reporting and duty to warn.

(4) The program must document in writing the program's efforts to notify the victim by phone of the requirements in this section.

(a) The program may mail the required information in this section if they cannot reach the victim by phone after three documented attempts;

(b) The program must document in writing the program's efforts to obtain the victim's contact information;

(c) When communicating with the victim at the time of assessment, enrollment, or denial into treatment the program must not assess the victim in any way, but the program may ask if the victim has any information they would like to share; and

(d) If on their own accord the victim provides the program with information regarding the participant or aspects of their relationship, then the program must keep the victim's information in a separate file from the participant's file.

(5) The program must not invite or require the victim to attend domestic violence intervention treatment sessions or education groups which the program requires participants to attend as a condition of their contracts.

(6) Programs may meet the requirements of this section through an agreement or contract with a victim services program, but it is the responsibility of the certified program to ensure and document in writing that all requirements are met.

NEW SECTION

WAC 388-60A-0330 Victim confidentiality—What must programs do in order to safeguard victim confidentiality? Each treatment program certified to provide assessments or any level of domestic violence intervention treatment must follow standards regarding victim confidentiality.

(1) A certified program must treat all information the victim provides to the program as confidential unless the victim gives written permission for the program to release the information or the program is required by law to release the information.

(2) If the program is required by law to release the information shared by the victim, such as in cases of abuse of children, the program must explain the process to the victim and the direct treatment staff's obligations as a mandated reporter under RCW 74.34.020(14).

(3) Any information provided by or to the victim must be kept separate from any files for participants unless the victim

has waived their confidentiality for the specific information that will be kept in the participant's file.

(4) If a victim informs the program that the participant has engaged in new abusive behavior, the treatment program must:

(a) Provide the victim with contact information for the local domestic violence victim services programs;

(b) Review with the victim the domestic violence intervention treatment program's victim confidentiality rules including how the victim can waive or release their confidentiality; and

(c) If the victim chooses to waive or release their confidentiality, the program must:

(i) Discuss the victim's safety and document the program's efforts to increase the victim's safety; and

(ii) Document the victim's confidentiality release or waiver in writing, which specifies the information the victim is releasing and for what purpose the information is being released.

(5) If the victim informs the program about a participant's new or recent abusive behavior, and either the victim or the program has reason to believe that disclosing this information to the participant will place the victim at significant risk, the program must keep this information confidential and must not directly address the behavior with the participant until, to the best of the program's knowledge, doing so no longer poses a significant risk to the victim.

(6) The program may explore other sources, such as probation or court records, by which the program has uncovered new or recent abusive behavior and may address the behavior with the participant in treatment if it can be disclosed that the program received this information from a source other than the victim, so as to not place the victim at additional risk.

NEW SECTION

WAC 388-60A-0335 Cooperation with victim services—How must a program cooperate with local domestic violence victim services agencies? Each treatment program certified to provide assessments or any level of domestic violence intervention treatment must ensure:

(1) The treatment program has established and maintains cooperative relationships with domestic violence victim services programs located in their community;

(2) The treatment program has a current list of local domestic violence victim programs in their area and the services each program provides;

(3) The list of domestic violence victim programs must be available on-site, in print or electronic form, to all direct service staff at all times; and

(4) The program regularly attends and participates in the local domestic violence task force, intervention committee, or workgroup if one exists in their community.

NEW SECTION

WAC 388-60A-0340 Domestic violence laws—What must a program know about domestic violence laws and justice system practices? Each treatment program certified to provide assessments or any level of domestic violence intervention treatment must ensure that the program has an

understanding of the laws pertaining to domestic violence and the operation of the justice system.

(1) At a minimum, a program must be familiar with and have written documentation of:

(a) State laws regulating the response to domestic violence by the criminal justice system;

(b) Relief available to victims of domestic violence offered by:

(i) Washington domestic violence law and civil protection orders;

(ii) Criminal no-contact orders; and

(iii) Civil restraining orders; and

(c) Information about local law enforcement, prosecution, and court and probation programs that work with domestic violence cases.

(2) The written documentation required in this section must be available at all times in print or electronic form to all direct service staff.

PARTICIPANT STANDARDS

NEW SECTION

WAC 388-60A-0345 Participant requirements—What must the program require of participants accepted into a domestic violence intervention treatment program?

(1) All participants enrolled in domestic violence intervention treatment must attend consecutive, same gendered, weekly group treatment sessions that are face to face and in-person.

(2) Another type of intervention may be approved for participants in any level of treatment for certain documented clinical reasons, such as psychosis, disability, or other conditions that make the individual not amenable to treatment in a group setting.

(3) A program may develop policies which allow level three and four participants to attend individual sessions as part of the participant's treatment plan in order to address their risk factors and meet their unique needs.

(4) Participants who experience hardship attending a certified program in person may ask the program to request an exception for the requirement of attending treatment group meetings in-person in order to attend via live video feed.

(a) An exception to the requirement to attend group in-person must be requested by the program on behalf of a participant and is subject to approval by the department;

(b) The department will review exception requests on a case by case basis and approve or deny the request within seven calendar days after receiving it, unless circumstances warrant a longer period of time;

(c) The department's decision to deny an exception request is not subject to administrative review under chapter 388-02 WAC; and

(d) The program submitting the exception request must be certified under this chapter and send written documentation by electronic or US mail to the department that outlines all of the following:

(i) Documentation that the participant does not have access to reliable transportation and their residence and place of employment are more than forty-five miles from a certi-

fied program, or the participant has a physical disability that creates a hardship for attending in person, or other good cause;

(ii) The program's applicable policies and procedures related to connecting participants to their home group through live video; and

(iii) How the program will ensure all participants' confidentiality including the use of a HIPAA compliant live video attendance program.

(5) The program must assign participants to a home group and the participant must be required to attend the same scheduled group each week.

(6) The program's supervisor must authorize any exceptions to this requirement and document the reason for the exception in the participant's file.

(7) A program may develop policies which allow a brief lapse in treatment of no more than thirty days when a participant transfers from another program or experiences extraordinary circumstances that impede their attendance.

(8) Any lapse in treatment must be approved by the program's supervisor and must not exceed thirty days unless approved in writing by the program's supervisor.

(9) Before the participant begins any level of domestic violence intervention treatment, the program must document in the participant's record:

(a) The participant has signed all applicable releases of information required by the treatment program, including those specified in WAC 388-60A-0365;

(b) The participant has signed a contract for services with the treatment program; and

(c) The participant has an assessment and treatment plan completed by a Washington state certified domestic violence intervention treatment program.

NEW SECTION

WAC 388-60A-0350 Co-occurring treatment—May participants engage in other types of treatments while they are in domestic violence intervention treatment?

Each treatment program certified for any level of treatment must adhere to the following standards regarding co-occurring treatment:

(1) A program may recommend or require a participant to participate in other types of treatment or classes during the same period the client is participating in the required weekly domestic violence intervention treatment sessions;

(2) Any other type of treatment or therapy must support the goal of victim safety by facilitating change in the participant's abusive behavior without blaming the victim for the participant's abuse;

(3) Participants must sign a release of information for all co-occurring treatment providers;

(4) In order to increase victim safety, participants must not engage in marital or couples counseling unless they meet all of the following requirements:

(a) The participant has been regularly attending domestic violence intervention treatment services for a minimum of six months;

(b) The program has documented that the participant has taken full accountability for their abusive behaviors; and

(c) The program has communicated with the victim or current partner and documented that the participant has made cognitive and behavioral changes that reduce the risk of intimate partner violence towards the victim; and

(5) Co-occurring therapies must not be substituted for the required domestic violence intervention treatment sessions, including but not limited to:

- (a) Individual therapy;
- (b) Family therapy;
- (c) Marital or couples counseling;
- (d) Parenting classes;
- (e) Substance use evaluations, treatment, drug testing; or
- (f) Anger management.

NEW SECTION

WAC 388-60A-0355 Participant rights—What are the participant rights that a program must follow and provide to the participant? (1) Each certified program must provide assessment and treatment participants with rights.

(2) The participant's record must include a copy of the rights, which are signed by the participant and include the following:

(a) A treatment program must provide each participant with the highest quality of service;

(b) Treatment program staff must establish a climate where all relationships with colleagues and participants are respectful;

(c) Each participant must have the assurance that the program staff will conduct themselves professionally, and avoid unprofessional conduct as specified in RCW 18.130.180;

(d) Staff working for a treatment program must not engage in or tolerate verbal abuse, physical abuse, sexual harassment, or exploitation towards a program participant;

(e) Each participant enrolled in domestic violence intervention treatment must have a written contract signed by the participant and the treatment program staff that meets the requirements of WAC 388-60A-0370; and

(f) The participant has the right to request reports and other related materials from their individual file which must be sent directly to the participant or their attorney in a timely manner when it is requested by the participant and they have signed an applicable release of information.

NEW SECTION

WAC 388-60A-0360 Participant confidentiality—What must programs do in order to safeguard participant confidentiality? Each program certified to provide assessments or any level of domestic violence intervention treatment must:

(1) Follow the confidentiality requirements contained in chapter 18.19 RCW for registered counselors and certified professionals;

(2) Require all program participants and guests to agree in writing not to disclose the identity of group participants or personal information about the participants;

(3) Keep all communications between the participant and direct treatment staff confidential unless:

(a) The participant has signed a release of information;

or

(b) The program is legally required to release the information; and

(4) Receive written consent, that gives details about the specific uses for the tape, when a program audio or video tapes a group session.

(a) The program must obtain an additional consent statement from each participant to permit use of the tape for any purpose other than the purposes specified in the original consent;

(b) Audio or video recordings must be stored in a locked, secure and confidential location that is not accessible to participants or the public; and

(c) Audio or video recordings must be destroyed when confidential storage is no longer available, before the program closes or before ownership of the program is transferred.

NEW SECTION

WAC 388-60A-0365 Releases of information—What releases of information must the program require from participants before they are accepted into a program? In order to obtain information for the assessment or treatment of the participant, to facilitate the communication necessary for periodic safety checks and case monitoring, and to increase the safety of the victim and any children involved, the treatment program must require all participants to sign the following releases, which must remain in effect until at least ninety days after the participant is discharged from treatment:

(1) A release for the victim when applicable;

(a) The release must allow the certified program to communicate with the victim during the assessment and treatment process;

(b) The release must allow the certified program to notify the victim that the participant has been accepted or rejected for treatment;

(c) The release must allow the certified program to notify the victim of any significant changes in the participant's treatment plan or noncompliance with treatment; and

(d) The release must allow the program to notify the victim if their safety appears to be at risk due to the participant's potential for violence or lethality;

(2) A release to receive and provide information regarding the participant with child protective services, child welfare services, other child services, or DSHS programs;

(3) A release allowing the program to receive and provide relevant information regarding the participant, including safety concerns, with each of the following entities as applicable:

(a) Significant others or current partners;

(b) Any adult children who are biological to or have lived with the participant;

(c) The victim's community and legal advocates;

(d) Police;

(e) Lawyers, including prosecutors;

(f) Courts;

(g) Probation officers;

(h) Parole officers;

(i) Court-appointed guardian ad litem; and

(j) Any concurrent or former treatment or assessment agencies, including but not limited to:

- (i) Domestic violence intervention treatment programs;
- (ii) Sexual offender programs;
- (iii) Mental health agencies;
- (iv) Individual therapists; and
- (v) Substance use treatment programs; and

(4) A release allowing the information and data from the participant's individual file to be used for research and evaluation must be offered but not required to be signed by the participant and the release must indicate that any information disclosed for research and evaluation purposes will remain confidential.

NEW SECTION

WAC 388-60A-0370 Participant contracts—What elements must be included in a contract between a program and participant? (1) Each treatment program certified for any level of domestic violence intervention treatment must require participants to sign and date a formal contract for services before treatment begins.

(2) The program must document that a copy of the contract was offered to the participant.

(3) The contract between each participant and the treatment program must include the following elements:

(a) A statement regarding the treatment program's philosophy that the victim may not be blamed for the participant's abuse, the participant must stop all forms of abuse, the abuser is to be held accountable for their actions, and the program's primary concern is for the safety of victims;

(b) A requirement that the participant must:

(i) Cooperate with all program rules;

(ii) Stop violent and threatening behaviors;

(iii) Develop and adhere to an accountability plan;

(iv) Comply with and when requested, bring documentation of, compliance with all court orders including but not limited to spousal support, child support, parenting plans, and orders of protection or no contact;

(v) Cooperate with the rules for group participation; and

(vi) Sign all required releases of information;

(c) A policy on attendance and consequences for inadequate attendance;

(d) A requirement that the participant must actively participate in treatment, including sharing personal experiences, values, and attitudes, as well as completing all group activities and assignments;

(e) Treatment completion criteria and core competencies;

(f) The program's policy regarding concurrent treatment requirements;

(g) The program's policy regarding the possession of weapons as described under chapter 9.41 RCW;

(h) An agreement that group members must honor the confidentiality of all participants;

(i) A statement that the treatment program has the duty to warn and protect victims, law enforcement, and third parties of any reasonably foreseeable risk of serious harm the program determines the participant poses to them;

(j) A requirement that the participant must either:

(i) Provide the program with the participant's arrest records, criminal history, civil or family law actions, protection orders, no contact orders, incident or police reports, and any information regarding treatment services previously received; or

(ii) Identify the existence of and location of all service records, and authorize release of all such records to the domestic violence treatment program;

(k) The program's policy regarding the use of drugs and alcohol, including a provision that the participant must attend treatment sessions free of drugs and alcohol; and

(l) Fees and methods of payment for treatment.

TREATMENT REQUIREMENTS

NEW SECTION

WAC 388-60A-0400 Behavioral assessment and interview criteria—Who may conduct the interview and assessment and what must it include? (1) A participant must complete an individual interview and behavioral assessment with a certified program prior to starting any level of treatment.

(2) The purpose of the assessment is to determine:

(a) The level of risk, needs, and responsibility for the participant;

(b) The level of treatment the program will require for the participant; and

(c) Behaviorally focused individualized treatment goals or objectives for an initial treatment plan.

(3) Only treatment staff who meet the minimum qualifications for direct treatment staff as defined in this chapter may complete the interview and assessment process and all related paperwork.

(a) An assessment must be completed by a staff person who has been designated by the department at the staff or supervisor level as outlined in WAC 388-60A-0240 and 388-60A-0250;

(b) A trainee must not have sole responsibility for conducting an interview or assessment;

(c) A trainee may sit in on an interview and assessment process, but the staff or supervisor level person must conduct the interview and write the assessment.

(4) The assessment process must include:

(a) A behavioral assessment and screening interview with the participant;

(b) Collateral information and input from third party sources;

(c) The participant's legal history; and

(d) A summary of the results from all applicable evidence-based, empirical, and objective standardized tests.

(5) The assessment process is ongoing throughout treatment and changes to the participant's program based on updated assessment information must be documented in the participant's record.

(6) Each program certified for assessments must comply with the following:

(a) The program staff must meet in person and face to face with the participant to conduct the assessment, and the assessment must be kept in the participant's file;

(b) Information gathered by or provided to the program from the current victim, past victims, significant others, children, or other family members must not be included in the assessment unless:

(i) The program has written consent from that person to include such information in the written assessment; or

(ii) The program is quoting public information gathered from a public record such as a police report, protective order, no contact order, or a similar document;

(c) The assessment must be written, completed, signed, and dated by the staff or supervisor who completed the interview and assessment; and

(d) The program must document their reasonable efforts to share a completed assessment in a timely manner when it is requested by another certified program and an applicable release of information has been signed by the participant.

(7) **General assessment information:** During the assessment interview a program staff or supervisor must write the assessment and document information that includes the following:

(a) The participant's referral source and contact information for the source when applicable;

(b) Basic demographic and contact information;

(c) The participant's current relationship status and their plans for the relationship;

(d) The participant's access to the victim and their children, family, and co-workers;

(e) An assessment of the participant's individual culture which includes:

(i) Gender identity;

(ii) Preferred pronouns;

(iii) Sexual orientation;

(iv) Religion or spiritual beliefs;

(v) Race;

(vi) Ethnicity; and

(vii) Groups with which the participant identifies;

(f) The possible cultural context for the participant's views about using violence in family relationships;

(g) An assessment of the participant's history of victimization that includes:

(i) Domestic violence victimization;

(ii) Sexual assault victimization; and

(iii) Other trauma history including complex trauma;

(h) Current or past protective orders, no contact orders, parenting assessments, parenting plans, and orders for supervised visitation with children;

(i) A summary of information from police or incident reports for current and past incidents involving coercive or abusive behaviors;

(i) The program must document the participant's specific abusive behaviors; and

(ii) The program must document whether there were children present during any incidents or in the immediate aftermath of an incident and what the children's exposure was to the abuse, the victim's injuries, and damage to property;

(j) The participant's comments or views about specific abusive behaviors in current and past incidents;

(k) Additional collateral information that is necessary to assess the participant's risks and needs, including but not limited to information from:

(i) Probation or parole officers;

(ii) The victim, previous partners, or a current partner if they choose to provide information;

(iii) Victim advocates;

(iv) 911 tapes;

(v) Guardians ad litem, CASAs, or parenting evaluators; and

(vi) Child protective service workers; and

(l) An assessment of whether children have been effected in any way by the participant's domestic violence and if a parenting class specific to perpetrators of domestic violence will be required by the program.

(8) **Domain 1:** An assessment of the participant's current and past high risk factors that include but are not limited to:

(a) Victim initiated separation from the participant in the last six months or other indication the victim may initiate separation;

(b) The infliction or threat of physical harm against an intimate partner including strangulation, physical, sexual, and psychological abuse, or a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over that partner;

(c) Access to a firearm, previous use or threats to use a weapon as it is defined in RCW 9.41, or prior training with weapons;

(d) Signs of jealousy, possessiveness, isolation, monitoring, stalking, or holding a victim captive;

(e) Abuse of children, pets or an elderly person;

(f) Instability in the participant's life including but not limited to employment, new or increased substance use, friendships, or intimate relationships;

(g) Children of the victim that are not the participant's biological children;

(h) History of violence in or outside of the home and any police contacts for the violence;

(i) Previous domestic violence or anger management assessments or treatments;

(j) Ideation, attempts, or threats of homicide and suicide; and

(k) Repeated violations of probation, no contact orders, protection orders, or similar orders.

(9) **Domain 2:** A screening for traumatic brain injury, making appropriate referrals for further assessment or treatment when needed. Screening information gathered must include:

(a) Traumatic brain injury or report of injury to the frontal lobe from an accident, sports, military, or similar activities;

(b) Any history of concussions or brain disease or injuries from strokes or dementia; and

(c) A history of experiencing repeated blows to the head regardless of whether the participant ever lost consciousness.

(10) **Domain 3:** A screening for indicators associated with the participant's mental health, making appropriate referrals for further assessment or treatment when needed. The screening must include:

(a) A complete diagnostic evaluation when it is completed by an appropriately credentialed mental health professional practicing within their scope of practice; and

(b) Whether the participant reveals any of the following:

- (i) Indicators associated with post-traumatic stress disorder;
- (ii) Indicators associated with bipolar disorder;
- (iii) Indicators associated with anxiety and depression;
- (iv) Indicators associated with personality anomalies;
- (v) Anti-social traits;
- (vi) Sociopathic traits;
- (vii) Psychopathic traits;
- (viii) Previous or current mental health treatment; and
- (ix) Other mental health or emotional indicators the participant or staff consider relevant to planning successful participation in domestic violence intervention treatment, such as psychosis.

(11) **Domain 4:** An assessment of the participant's belief system as it relates to:

- (a) Hierarchical relationships;
- (b) Spiritual, cultural, or religious beliefs about gender and family roles that condone partner violence;
- (c) Readiness to change; and
- (d) Level of accountability.

(12) **Domain 5:** A screening for substance use, making appropriate referrals for further assessment or treatment by a chemical dependency professional when needed. The screening must include:

- (a) Past and current substance use;
- (b) Information about charges, assessments, or treatments related to substance use; and
- (c) Other substance use information the participant or staff consider relevant to successful participation in domestic violence intervention treatment.

(13) **Domain 6:** An assessment of the participant's environmental factors which must include:

- (a) Criminal history from the participant's:
 - (i) Self-report;
 - (ii) A background check that covers each state they have lived in over the last ten years; and
 - (iii) Collateral sources;
- (b) Friends and family with criminogenic behaviors;
- (c) The absence or presence of pro-social supports;
- (d) A brief employment history and current status including:

- (i) Length of employment; and
- (ii) Level of job satisfaction;
- (e) Highest level of education completed and any barriers to education or learning, including literacy, learning disabilities, or language needs;

(f) The people who make up the participant's support system and how their beliefs do or do not support the participant's abusive behaviors;

(g) The participant's motivations for healthy family relationships;

(h) The participant's strengths, social activities, hobbies, and recreational activities; and

(i) Whether or not the participant is socially isolated.

(14) **Domain 7:** Documentation of the results from an evidence-based, empirical, and objective standardized test that assesses risk, lethality, or needs for domestic violence perpetrators and documentation of the participant's level of psychopathy when needed.

(a) Examples of acceptable assessments for risk, lethality, or needs for domestic violence perpetrators include but are not limited to:

- (i) The Domestic Violence Inventory;
- (ii) The Domestic Violence Screening Instrument - Revised;
- (iii) The Ontario Domestic Assault Risk Assessment; and

(iv) The Spousal Assault Risk Assessment;

(b) If a program staff or supervisor has reason to believe it is needed or the participant has indicated any combination of three or more anti-social, sociopathic, or psychopathic traits, then the staff or supervisor must gather information related to the participant's level of psychopathy; and

(c) Examples of acceptable assessments for psychopathy include but are not limited to:

- (i) Self-Report Psychopathy Scale (SRP4);
 - (ii) Hare P-scan; or
 - (iii) Psychopathy checklist (PCL-R or PCL-SV);
- (A) The administration of the PCL requires appropriate credentials and training; and

(B) The Interpersonal measure of psychopathy (IM-P) may be used with the PCL-R.

(15) **Acute or critical factors:** The following assessment factors are considered critical or acute and indicate the participant is at a higher risk for lethality or recidivism and must be required to attend level three or four treatment unless the program's supervisor documents extraordinary reasons for an exception in the participant's record.

(16) Other assessment factors may indicate a participant is at a high risk even if they do not meet any of these factors. The critical or acute factors include but are not limited to:

(a) Previous incidents of physical assaults causing injury, sexual assaults, strangulation, or previous reported incidents toward more than one partner;

(b) Previous use or threats with weapons against an intimate partner or family member;

(c) Stalking behaviors;

(d) Physical, sexual, or assaultive violence against children, pets, or an elderly person;

(e) Attempts or threats of homicide or suicide in the last twelve months;

(f) Repeated violations of probation, no contact orders, protective orders, or similar orders; or

(g) A medium or high level of psychopathy.

(17) If the program cannot obtain one or more of the items required in the assessment, then the program must document within the assessment their reasonable efforts to obtain the information.

(18) During an assessment process, the program staff or supervisor who conducted the interview must document a completed DSHS domestic violence 'risks, needs and responsibility form,' which can be downloaded from <https://www.dshs.wa.gov/ca/domestic-violence/certification-process>.

(19) **Summary:** The assessment must contain a written summary which at a minimum includes findings from the behavioral assessment and interview with the participant, collateral information, and input from third party sources, and includes:

- (a) A summary of the participant's social and legal history;
- (b) An assessment of the degree of abusive cognitive and behavioral patterns;
- (c) An assessment of the behaviors that need to be targeted in domestic violence intervention treatment;
- (d) An assessment of the participant's level of accountability and their motivations and readiness to change;
- (e) A summary and assessment of the results of all evidence-based, empirical, and objective standardized tests given through the assessment process; and
- (f) The program's recommendation and rationale for no domestic violence intervention treatment or a condition for treatment that indicates level one, two, three, or four treatment that corresponds to the participant's risks and needs as determined through the interview and assessment process;
- (i) The recommended level of treatment must not be diminished by factors such as the absence of legal charges, the type of legal charge the participant may have received, plea deals, or any other influences from outside entities; and
- (ii) The program must recommend a level of domestic violence intervention treatment when intimate partner violence has occurred, unless the program has documented a reasonable and valid rationale for a recommendation of an alternative service or no treatment at all in the assessment; and
- (g) All required and recommended referrals to other types of treatment such as substance use, parenting, or mental health treatment in order for the participant to be successful in domestic violence intervention treatment.

NEW SECTION

WAC 388-60A-0405 Treatment planning—What must the treatment plan include and when must it be updated? Each program certified for any level of domestic violence intervention treatment must adhere to the following treatment planning standards:

- (1) The program must develop an individualized written treatment plan for each participant who is accepted into the domestic violence intervention treatment program;
- (2) The initial treatment plan must be completed before the participant begins treatment;
- (3) The initial treatment plan and all updates to the plan must be signed and dated by the participant and direct service staff member who updated the plan;
 - (a) The program must document that a copy of the original and any updated treatment plans have been given to the participant and the referral source unless the recipient has opted out of receiving it; and
 - (b) If the referral source or participant has opted out of receiving a copy, documentation of them opting out must be documented in the participant's file;
- (4) The program must base the participant's treatment on:
 - (a) The interview and assessment completed by a Washington state certified domestic violence intervention treatment program;
 - (b) The risks, needs, and responsivity form (available for download at <https://www.dshs.wa.gov/ca/domestic-violence/>

certification-process) which the program completed for the participant; and

- (c) Ongoing risk and assessment information obtained throughout treatment from the participant, collateral, and third party sources;
- (5) The treatment plan must:
 - (a) Adequately and appropriately address any criminogenic needs, as well as high risk, critical, and acute factors of the individual participant;
 - (b) Identify the program's general responsivity by documenting the evidence-based or promising treatment modality the program will use to address the participant's risks and needs in order to assist them in meeting their goals or objectives;
 - (c) Identify the program's specific responsivity, taking into account the participant's characteristics such as their strengths, learning style, personality, motivation, bio-social factors, and culture;
 - (d) Include individualized goals or objectives which are behaviorally specific and measurable;
 - (e) Document required referrals to other treatments or classes such as mental health, substance use, or parenting, which are necessary in order for the participant to be successful in domestic violence intervention treatment;
 - (f) Document recommended referrals to other treatment programs and resources; and
 - (g) Document which treatment gets priority and the sequence of treatment for the participant if more than one treatment service is indicated on the plan; and
- (6) The treatment plan must be updated when indicated by:
 - (a) Significant changes in the participant's behavior or circumstances;
 - (b) Factors associated with victim safety;
 - (c) A change in the participant's treatment risks, needs, goals, or objectives; or
 - (d) If the participant is moving to a higher or lower level of treatment.

NEW SECTION

WAC 388-60A-0410 Placement criteria—How must a program determine a participant's level of treatment?

- (1) For level one treatment the program must ensure:
 - (a) A program must place participants in level one treatment if the program has documented through the assessment, collateral contacts, the participant's legal history and the "risks, needs and responsivity" form all of the following:
 - (i) The participant has no previous domestic violence charges regardless of an arrest or legal outcomes;
 - (ii) The participant is at an overall low risk for lethality or recidivism; and
 - (iii) The participant has engaged in abusive and controlling behavior with an intimate partner;
 - (b) If the program cannot obtain information from all of the sources in this section then the program must document their reasonable efforts to obtain the information and must place the participant in level two, three, or four treatment; and

(c) A participant who has already been placed in a higher level of treatment must not be transferred to level one treatment at any time.

(2) For level two treatment the program must ensure:

(a) A program must place participants in level two treatment if the program has determined through the assessment, collateral contacts, the participant's legal history, the assessment process and the "risks, needs and responsivity" form the following:

(i) The participant is at an overall medium risk for lethality or recidivism;

(ii) The participant has an established pattern of abuse and control; and

(iii) The participant has little or no criminogenic needs; and

(b) If the program cannot obtain information from any of the sources in this section, then the program must document their reasonable efforts to obtain the information.

(3) For level three treatment, the program must ensure the program places participants in level three treatment if the program has documented through the assessment, collateral contacts, the participant's legal history and the 'risks, needs and responsivity' form the following:

(a) The participant is at an overall high risk for lethality or recidivism;

(b) The participant has indicated an acute or critical assessment factor as specified in WAC 388-60A-0400(15) and WAC 388-60A-0400(16); or

(c) The participant has identified antisocial traits; and

(d) The participant has criminogenic needs which can be addressed in group or through ancillary individual sessions, depending on their unique risks and needs as identified in the participant's assessment and outlined in their treatment plan.

(4) For level four treatment, the program must ensure:

(a) The participant's risks and needs indicate a medium or high level of psychopathy as identified through a combination of information from:

(i) The assessment;

(ii) Collateral sources;

(iii) The participant's legal history; and

(iv) A relevant assessment tool which may include but is not limited to:

(A) The Self-Report Psychopathy Scale (SRP4);

(B) The PCL-SV or PCL-R which may include the IM-P;

(C) The Hare P-scan; or

(D) Other evidence-based measures of psychopathy; and

(b) Level four treatment may be facilitated through group or individual sessions or a combination of group and individual sessions in order to meet the participant's unique treatment needs as outlined in their treatment plan.

(5) Levels one and two treatment may be combined in the same group.

(6) Level three treatment participants may be combined with levels one and two or in a separate group, depending on the individual treatment needs and goals of each participant.

(7) Participants in level four treatment must be in a separate group from all other participants in lower levels of treatment and must not be combined with any other groups at any time.

NEW SECTION

WAC 388-60A-0415 Required cognitive and behavioral changes—Depending on their level of treatment, what changes must the program document that the participant has made? (1) For levels one, two and three treatment, the program must ensure:

(a) The groups are facilitated by a program staff member who is designated by the department at the staff or supervisor level;

(b) A trainee may co-facilitate with a staff or supervisor, but must not facilitate the group alone at any time;

(c) The program uses evidence-based or promising practices (see WAC 388-60A-0310) to facilitate the areas of treatment focus listed in this section;

(d) The cognitive and behavioral changes in this section are the minimum standard for certified domestic violence intervention treatment and the program must add topics, discussions, lessons, exercises, or assignments that meet the individual treatment needs of the participant;

(e) The areas of treatment in this section include cognitive and behavioral changes, which must be shared in treatment by the participant and documented by the program in the participant's individual record as those changes are identified;

(f) Each treatment program certified for levels one, two, and three domestic violence intervention treatment must document in each participant's file that the following cognitive and behavioral changes are documented for each participant and at a minimum include:

(i) **Types of abuse:** Individual and specific examples of how the participant has acknowledged that they have engaged in any abusive behaviors including but not limited to the following types of abuse:

(A) Physical;

(B) Emotional and psychological including terrorizing someone or threatening them;

(C) Verbal;

(D) Spiritual;

(E) Cultural;

(F) Sexual;

(G) Economic;

(H) Physical force against property or pets;

(I) Stalking;

(J) Acts that put the safety of partners, children, pets, other family members, or friends at risk; and

(K) Electronic, online, and social media;

(ii) **Belief systems:** Exploration of the participant's individual and cultural belief system, including acknowledgment of how those beliefs have allowed and supported violence against an intimate partner including privilege or oppression;

(A) Specific examples of how the participant's individual belief system has allowed or supported the use or threat of violence to establish power and control over an intimate partner; and

(B) Examples of how the participant has experienced societal approval and support for control through violence and the designation of an intimate partner or children as safe targets for this violence;

(iii) **Respectful relationships:** Documentation of new skills the participant has gained through exercises in learning and practicing respectful relationship skills including techniques to be non-abusive and non-controlling that include but are not limited to:

(A) Requesting and obtaining affirmative consent as an essential aspect of interpersonal relationships; and

(B) Respecting boundaries about others' bodies, possessions, and actions;

(iv) **Children:** Documentation of the participant's understanding of how children have been impacted by the participant's abuse and the incompatibility of domestic violence and abuse with responsible parenting including but not limited to:

(A) An understanding of the emotional impacts of domestic violence on children;

(B) An understanding of the long-term consequences that exposure to incidents of domestic violence may have on children; and

(C) The behavioral changes the participant has made and shared with the group as a result of this understanding;

(v) **Accountability:** Documentation of the participant's understanding of accountability for their abusive behaviors and their resulting behavioral changes including but not limited to:

(A) Documentation of the participant's understanding of how they are solely responsible for their abusive and controlling behavior and how they acknowledge this fact;

(B) An understanding of the need to avoid blaming the victim and the ability to consistently take responsibility for the participant's abusive behavior, including holding themselves and others in group accountable for their behavior;

(C) Documentation of a minimum of three separate individual examples of how the participant has taken accountability since beginning domestic violence intervention treatment which must be kept in the participant's file;

(D) Documented examples of how the participant has demonstrated spontaneous accountability in treatment, taking accountability in the moment;

(E) Documentation of the participant's accountability plan:

(I) The treatment program may assist the participant in developing the plan;

(II) In the plan the participant must make a commitment to giving up power and control, including abusive and controlling behaviors towards the victim and others;

(III) In the plan the participant must take accountability for specific abusive behaviors they have committed and have a plan for stopping all abusive behaviors;

(IV) In the plan the participant must identify examples of individualized and specific behavioral changes they have made which demonstrate an understanding of accountability; and

(V) In the plan the participant must identify their personal motivations, ethics, and values as they relate to maintaining healthy relationships; and

(F) Documentation that the participant has demonstrated an understanding of accountability in their past and current relationships, and their progress in taking accountability including the resulting cognitive and behavioral changes during treatment;

(vi) **Financial and legal obligations:** Documentation of the participant's understanding of why it is necessary for them to meet their financial and legal obligations to family members and the actions they are taking to meet those obligations;

(vii) **Empathy:** Documentation of the exercises or assignments on empathy building that demonstrate the participant's cognitive and behavioral changes as a result of increasing their empathy;

(viii) **Defense mechanisms:** Documentation of what the participant has identified as their individual defense mechanisms such as projection, denial, and detachment as well as healthy coping strategies the participant has learned, and the cognitive and behavioral changes they have made in dealing with unpleasant feelings;

(ix) **Self-care:** Documentation of individualized self-care practices the participant has learned and incorporated into their lives, and documentation of their understanding of why self-care is crucial for healthy relationships;

(x) **Support system:** Documentation of the participant's healthy support system, including who they have identified as part of that system and how they provide healthy support;

(xi) **Indicators:** Documentation of the indicators or red flags the participant has identified that they have engaged in, their understanding of how those behaviors are abusive, and the cognitive and behavioral changes they have made as a result;

(xii) **Cognitive distortions:** Documentation of the cognitive distortions or thinking errors the participant has identified, that they have used to justify their abusive behaviors, and how they have learned to reframe and change their thinking when those cognitive distortions are present;

(xiii) **Personal motivations:** Documentation of the participant's personal motivations for abusive behaviors and the cognitive and behavioral changes they have made to replace those beliefs and subsequent behaviors which include but are not limited to:

(A) A sense of entitlement;

(B) A belief that the participant should have power and control over their partner;

(C) Learned experience that abuse can get the participant what they want;

(D) The need to be right or win at all costs; and

(E) Insecurity and fear;

(xiv) **Relationship history:** Documentation of the participant's relationship history which documents common characteristics, motivations for abuse, applicable cognitive distortions, and indicators of domestic violence throughout the participant's history of intimate relationships;

(A) The treatment program and group may assist the participant in developing the relationship history; and

(B) The relationship history must focus on the participant's behaviors in an accountable manner without blaming others; and

(xv) **Criminogenic needs:** Documentation of treatment in group or individual sessions with level three participants that addresses their individual criminogenic needs as indicated through assessment and treatment planning.

(2) For level four treatment the program must ensure:

(a) The participant's individual risks, needs, and goals as indicated on the participant's treatment plan are addressed in level four treatment either in groups, individual sessions, or a combination of group and individual sessions;

(b) Level four treatment must only be facilitated by direct treatment staff designated as a supervisor who has attended the initial six hours of education approved by the department for providing level four treatment as well as four hours of continuing education every twenty-four months following the initial training;

(c) The treatment program providing level four treatment must be certified for level four treatment and demonstrate:

(i) The program uses cognitive behavioral and trauma informed techniques in treatment;

(ii) The program uses techniques that:

(A) Enhance intrinsic motivation;

(B) Use targeted interventions that are directly tied to the participant's needs, goals, or objectives identified in the participant's individualized treatment plan;

(C) Skill train with directed practice with participants;

(D) Increase positive reinforcement with participants; and

(E) Engage in ongoing support in communicating with the participant;

(d) The skills and behavioral changes for participants in level four treatment are the minimum standard and the program must add behavior changes, skills, lessons, exercises, or assignments that meet the individual treatment needs of the participant;

(e) The program must ensure that the following is documented in each participant's file in level four treatment and at a minimum include:

(i) The individualized meaning or motivations behind the participant's abusive behaviors and documentation of their belief about why it is in their best interest to meet their needs in alternative, legal, and healthy ways;

(ii) Documentation of how the negative legal and social consequences for someone who commits domestic violence has an affect on them personally and how that serves as motivation for changing their behaviors;

(iii) Documentation of their individual motivation for developing and improving a healthy support system, including who is already part of that support system and the identification of potential members of their healthy support system; and

(iv) Documentation of how the participant is working with the program to meet their individual dynamic criminogenic needs by:

(A) Reducing anti-social and pro-criminal attitudes, values, beliefs, and cognitive-emotional states;

(B) Reducing pro-criminal associates and increasing involvement with others who are pro-social;

(C) Managing temperamental and anti-social personality patterns that are conducive to criminal activity;

(D) Reducing anti-social behaviors;

(E) Identifying family factors that include criminality and a variety of psychological problems in the family of origin;

(F) Encouraging behaviors that lead to higher levels of personal, educational, vocational, or financial achievement;

(G) Encouragement of involvement in pro-social leisure activities;

(H) Understanding how abusing alcohol and drugs effects the participant's choices, decisions, and outcomes; and

(I) Understanding how employment status and their level of satisfaction effects the participant's choices, decisions, and outcomes.

(3) The program must make reasonable accommodations for participants with different educational levels, learning disabilities and learning styles throughout all levels of treatment.

NEW SECTION

WAC 388-60A-0420 Minimum treatment periods and requirements—How must a program determine the treatment period for each participant?

(1) The minimum treatment period is the time required for the participant to fulfill all conditions of treatment set by the treatment program as indicated in the participant's contract and their treatment plan.

(2) Satisfactory completion of treatment must not be based solely on the client participating in the treatment program for a certain period of time or attending a certain number of sessions.

(3) In addition to meeting the participant's goals and objectives as outlined in their treatment plan, the program must require each participant to satisfy all treatment program requirements for:

(a) A minimum of six months of consecutive weekly same gender group sessions for level one treatment;

(b) A minimum of nine months of consecutive weekly same gender group sessions for level two treatment;

(c) A minimum of twelve months of consecutive weekly same gender group, individual, or a combination of group and individual sessions for level three treatment; or

(d) A minimum of eighteen months of consecutive weekly same gender group, individual, or a combination of group and individual sessions for level four treatment.

(4) Any breaks in treatment must be reasonable, justified, and follow the program's policies.

(a) A break in treatment cannot exceed thirty days, unless it is approved by the program's supervisor, and the reason for the decision is documented in the participant's file;

(b) A break in treatment may include conditions the participant must meet during the break in order to maintain a compliant status, such as assignments or check-ins which must be documented in the participant's file, and the participant must receive a copy of the conditions; and

(c) A break in treatment must be reported to the referral source unless they have opted out of receiving notification of breaks in treatment which must be documented in the participant's file.

NEW SECTION

WAC 388-60A-0425 Re-offenses and noncompliance during treatment—What must happen if a participant re-

offends or is not compliant while they are in treatment?

Each treatment program certified for any level of domestic violence intervention treatment must ensure:

(1) The treatment program has defined what it means to re-offend, including abusive or controlling behaviors that may or may not be illegal.

(2) The treatment program has established and written consequences if a participant re-offends during treatment or does not comply with program requirements.

(3) The program has documented that the participant was made aware of the consequences of re-offending prior to starting treatment.

(4) If the participant re-offends during treatment the program must document in the participant's record:

(a) The details of the re-offense;

(b) Any changes to the ongoing assessment, treatment plan, level of treatment, or minimum treatment period and requirements for the participant as a result of the re-offense or if the program has discharged the participant because the program feels the participant is unlikely to benefit from additional time at the program; and

(c) The notification of the re-offense to the referral source.

(5) The program must document re-offences or non-compliance in:

(a) The participant's record;

(b) Reports to the court, if applicable; and

(c) Reports to the victim, if feasible.

(6) When a participant is non-compliant with their contract, program rules, or attendance, within seven days of the non-compliance the program must:

(a) Notify the court or other referral source, if applicable; and

(b) Document in the participant's file:

(i) The details of the non-compliance;

(ii) The consequences imposed by the program and referral source, if applicable; and

(iii) Any changes to the participant's ongoing assessment and treatment plan as a result of the non-compliance.

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

NEW SECTION**WAC 388-60A-0430 Completion criteria and core competencies—What must the program document for a participant to be eligible to successfully complete treatment?** (1) The program must ensure:

(a) The participant has met the program's written criteria for satisfactory completion of treatment including:

(i) Cooperation with all program rules and requirements;

(ii) The goals or objectives of the participant's treatment plan, which include measurable behavioral changes; and

(iii) The minimum treatment period and requirements;

(b) The participant has attended and complied with all other treatment sessions required by the program, which may include ancillary treatments or classes such as mental health, substance use, or parenting;

(c) The participant is in compliance with all related court orders;

(d) When a participant who is court ordered to pay spousal or child support is behind on payments, they must show a payment plan agreement and documentation that they have been in compliance with the plan for a minimum of six months, in order to be in compliance; and

(e) Documentation of all cognitive and behavioral changes as required through coverage of the treatment topics, the completion of all assignments, and the requirements as outlined in the level of treatment in which they participated.

(2) In order to complete levels one, two, or three treatment the program must also document the participant has successfully demonstrated core competencies:

(a) Accountability and adherence to the participant's accountability plan;

(b) Increased victim safety as evidenced by written documentation of the participant's demonstration of a change in their beliefs which have resulted in the participant's cessation of all violent acts or threats of violence for a minimum of the last six months; and

(c) Knowledge of their personal primary motivations for abusive or controlling behaviors and alternative ways to meet their needs in a non-abusive manner.

(3) In order to complete level four treatment, the program must document the following in the participant's file:

(a) The participant's plan for how they will meet their needs in non-abusive, legal, and healthy ways;

(b) The problem solving and self-control skills the participant has learned and demonstrated in treatment to deal with unpleasant feelings; and

(c) The program's assessment of satisfactory changes to the participant's environmental factors such as peer groups, employment, or substance use.

NEW SECTION**WAC 388-60A-0435 Discharging participants—What must a program do when a participant is discharged from treatment?** (1) Discharge criteria must be uniform and predictable.

(2) Discrimination may not occur against any participant.

(3) The program may discharge or transfer a participant if the treatment program cannot provide adequate treatment services to the participant because of the treatment program's current development or certified levels of treatment.

(4) When a participant is discharged for satisfactory completion of treatment the program must ensure:

(a) The treatment program documents a written discharge summary in the participant's file within seven days of completion which includes:

(i) A summary of the cognitive and behavioral changes the participant demonstrated in treatment;

(ii) The goals or objectives the participant met in treatment as outlined in their treatment plan(s);

(iii) The program's assessment of the participant's current risk factors;

(iv) Any recommendations for the participant's treatment after discharge; and

(v) The participant's eligibility criteria to return to the treatment program in the future; and

(b) The treatment program must notify the following parties within seven days when a participant satisfactorily completes treatment:

(i) The court having jurisdiction, if the participant has been court-mandated to attend treatment; and

(ii) The victim, if feasible, which must be documented in writing.

(5) When a participant is discharged for incomplete or unsatisfactory treatment the program must ensure:

(a) The treatment program documents a written discharge summary in the participant's file within three days of discharging participants who do not complete treatment which must include:

(i) The reason the participant was discharged from treatment;

(i) A summary of what the participant demonstrated in treatment including any cognitive or behavioral changes;

(ii) The program's assessment of the participant's current risk factors;

(iii) Recommendations for the participant's treatment after discharge; and

(iv) The participant's eligibility criteria to return to the treatment program in the future;

(b) The program must document that the participant has not complied with:

(i) The participant's contract with the treatment program;

(ii) The participant's treatment plan with the treatment program;

(iii) A court order;

(iv) A probation agreement; or

(v) Group rules;

(c) The treatment program must notify the following parties in writing when the program discharges a participant from the program because of failure to complete treatment:

(i) The court having jurisdiction, if the participant has been court-mandated to attend treatment;

(ii) The participant's probation or parole officer, if applicable; and

(iii) The victim of the participant, if feasible; and

(d) The program must notify the above parties within three days of terminating the participant's enrollment in the program.

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

DEPARTMENT REVIEWS AND ACTIONS

NEW SECTION

WAC 388-60A-0500 On-site reviews and plans of correction—How does the department review certified programs for compliance with the regulations of this chapter? To obtain and maintain certification to provide domestic violence intervention treatment services, including certification to provide assessments or any level of care, each program is subject to an on-site review to determine if the

program is in compliance with the minimum certification standards of this chapter.

(1) For a standard review, a department representative(s) conducts an entrance meeting with the program and an on-site review that may include a review of:

(a) Program policies and procedures;

(b) Direct service staff personnel records;

(c) Participant and victim records;

(d) Written documentation of the program's treatment program;

(e) Attendance sheets and other forms related to the provision of domestic violence intervention treatment services;

(f) The facility where services are delivered and where records are kept;

(g) The program's quality management plan; and

(h) Any other information that the department determines to be necessary to confirm compliance with the minimum standards of this chapter, including but not limited to interviews with:

(i) Individuals served by the program; and

(ii) The program's direct treatment staff members.

(2) The department representative(s) concludes an on-site review, which may or may not happen in the same visit, with an exit meeting that includes, if available and applicable:

(a) A discussion of findings;

(b) A statement of deficiencies requiring corrective action; and

(c) A compliance report signed by the program's designated official and the department representative.

(3) The department requires the program to correct the deficiencies listed on the plan of correction:

(a) By the negotiated time frame agreed upon by the program and the department representative; or

(b) Immediately if the department determines participant or victim health and safety concerns require immediate corrective action.

(4) If the program fails to make satisfactory corrective actions by the negotiated deadline in the compliance report, the department may:

(a) Begin to take progressive action against the program's certification; or

(b) Initiate an investigation of the program.

(5) The department may schedule a follow-up review after a standard review or investigation to ensure all corrective actions have been successfully implemented.

NEW SECTION

WAC 388-60A-0510 Complaint investigations—How must an investigation get initiated and what is the process of the investigation? DSHS investigates complaints regarding domestic violence intervention treatment programs that provide assessments or any level of intervention services.

(1) Any person may submit a written complaint to DSHS if the person has the following concerns about a certified program:

(a) The program has acted in a way that places the identified victim, current partner, or children at risk; or

(b) The program has failed to follow standards in this chapter.

(2) Once it receives a complaint about a certified program, the department will:

(a) Determine that the complaint includes sufficient information to be deemed valid;

(b) Notify the program within fourteen days of the complaint being determined valid that the department has received a complaint about the program; and

(c) Notify the program by US Mail that an investigation has been initiated.

(3) The department may begin an investigation of a domestic violence intervention treatment program without a written complaint if the department believes that the program:

(a) Has placed the identified victim, current partner or children at risk; or

(b) Failed to follow the standards of this chapter.

(4) The investigation of a complaint against a domestic violence intervention treatment program may include:

(a) Contact with:

(i) The person making the complaint;

(ii) Other persons involved in the complaint; and

(iii) The treatment program;

(b) A request for written documentation of evidence; and

(c) An on-site visit to the program to review files or interview program staff.

(5) The department must complete its investigation within sixty days of beginning the investigation, unless circumstances warrant a longer period of time.

(6) The department will prepare written results of the complaint investigation.

(7) If the department decides that the treatment program behaved in a way that placed victims at risk or failed to meet the standards outlined in this chapter, the written results must include a decision regarding the status of the program's certification.

(8) If the department determines that a complaint against a domestic violence intervention treatment program is founded, the department may:

(a) Send a written warning to the treatment program;

(b) Suspend the treatment program's certification;

(c) Revoke the treatment program's certification; or

(d) Temporarily or indefinitely remove a program staff's designation as a trainee, staff, or supervisor.

(9) The department must send the written results of its investigation to the program.

(a) If any allegations were founded, the written results must be sent by certified mail, return receipt requested, within twenty days after completing the investigation; and

(b) If all allegations were unfounded, the written results may be sent to the program by electronic mail.

(10) The department will send a copy of the written results of the investigation to the person who made the complaint against the domestic violence intervention treatment program either by United States mail or electronic mail when feasible.

NEW SECTION

WAC 388-60A-0520 Program or staff status changes—What must happen if a program's certification or a staff member's designation is changed by the department?

(1) If the department issues a written warning to a program, the department must send notice by certified mail and provide the treatment program with:

(a) The specific reasons for the written warning;

(b) The chapter 388-60A WAC standards that the written warning is based on;

(c) Any remedial steps or corrective actions which the program must complete to the satisfaction of the department;

(d) The deadline for completion of any corrective actions or remedial steps; and

(e) If the treatment program refuses or fails to remedy the problems outlined in the written warning, the department may revoke or suspend the certification of the program.

(2) If the department suspends a treatment program's certification, the department must send notice by certified mail and provide the treatment program with:

(a) The specific reasons for the suspension;

(b) The chapter 388-60A WAC standards that the suspension is based on;

(c) The effective date of the suspension;

(d) Any remedial steps or corrective actions which the program must complete to the satisfaction of the department before the department will reinstate the program's certification and lift the suspension; and

(e) The deadline for completion of any corrective actions or remedial steps.

(3) If the department revokes a program's certification, the department must send notice by certified mail and provide the program with:

(a) The specific reasons for the revocation;

(b) The chapter 388-60A WAC standards the revocation is based on; and

(c) The effective date of the revocation.

(4) If the department temporarily or indefinitely removes a program staff's designation as trainee, staff, or supervisor, the department must send notice by certified mail and provide the treatment program with:

(a) The specific reasons for the removal of the program staff's designation;

(b) The chapter 388-60A WAC standards that the decision to remove the program staff's designation was based on; and

(c) If applicable, any remedial steps or corrective actions the program staff must take in order to have their designation as a trainee, staff, or supervisor reinstated.

(5) When the department revokes or suspends a program's certification, issues a written warning, or removes a program staff's designation as trainee, staff, or supervisor, then the department will notify the program director through certified mail of the program's right to request an administrative hearing.

(6) The program director may request an administrative hearing from the office of administrative hearings under chapter 388-02 WAC within thirty calendar days of the date on which the program received notice of the department's decision via certified mail, and if the program fails to submit

its request for a hearing within this timeframe, the program shall have no right to administrative review of the department's decision.

NEW SECTION

WAC 388-60A-0530 Program responsibilities after an action—What actions must the program take after notification that its certification has been suspended, revoked, or if no direct service staff are qualified to provide services? (1) If the department revokes, suspends a program's certification, or if no qualified direct service staff are available to provide services, the program must:

(a) Take immediate steps to notify and refer current participants to other certified domestic violence intervention treatment programs prior to the effective date of revocation or suspension;

(b) Cease accepting participants of domestic violence into its treatment program;

(c) Notify victims, current partners of the participants, and any relevant agencies about the participant referral; and

(d) Notify, in writing, the presiding judge and chief probation officer of each judicial district from which the treatment program receives court referrals.

(2) If a program also holds a license or certification from the state of Washington for other treatment modalities, the department may notify the appropriate licensing or certifying authority that the program's domestic violence intervention treatment certification has been suspended or revoked, as applicable.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-60-0015 What definitions apply to this chapter?

WAC 388-60-0025 What is the purpose of this chapter?

WAC 388-60-0035 Must domestic violence perpetrator treatment programs be certified?

WAC 388-60-0045 What must be the focus of a domestic violence perpetrator treatment program?

WAC 388-60-0055 What must be a treatment program's primary goal?

WAC 388-60-0065 What steps must a treatment program take to address victim safety?

WAC 388-60-0075 What must a treatment program require of its participants?

WAC 388-60-0085 What requirements apply to group treatment sessions?

WAC 388-60-0095 May a participant be involved in more than one type of treatment while enrolled in a domestic violence perpetrator treatment program?

WAC 388-60-0105 What requirements does the department have for treatment programs regarding nondiscrimination?

WAC 388-60-0115 Does a program have the authority to screen referrals?

WAC 388-60-0125 What rights do participants in a treatment program have?

WAC 388-60-0135 What information about the participant must the treatment program keep confidential?

WAC 388-60-0145 What releases must a program require a participant to sign?

WAC 388-60-0155 Must a treatment program keep information provided by or about the victim confidential?

WAC 388-60-0165 What information must the treatment program collect and discuss with the client during the intake process or assessment interview?

WAC 388-60-0175 Who may complete the intake process or conduct the assessment interview?

WAC 388-60-0185 Must the program compile a written document based on information gathered in the intake/assessment process?

WAC 388-60-0195 Must the treatment program develop an individual treatment plan for each participant?

WAC 388-60-0205 What must a treatment program consider when developing an individual treatment plan for a participant?

WAC 388-60-0215 Must a program require a participant to sign a contract for services with the treatment program?

WAC 388-60-0225 What must the treatment program include in the contract for each participant's treatment?

WAC 388-60-0235 Must a treatment program follow an educational curriculum for each participant?

WAC 388-60-0245 What topics must the treatment program include in the educational curriculum?

WAC 388-60-0255 What is the minimum treatment period for program participants?

WAC 388-60-0265 What criteria must be satisfied for completion of treatment?

WAC 388-60-0275 What must the treatment program do when a participant satisfactorily completes treatment?

- WAC 388-60-0285 Must a treatment program have policies regarding any reoffenses during treatment?
- WAC 388-60-0295 Does a program need guidelines for discharging participants who do not complete treatment?
- WAC 388-60-0305 Who must the program notify when the program discharges a participant because of failure to complete treatment?
- WAC 388-60-0315 What are the minimum qualifications for all direct treatment staff?
- WAC 388-60-0325 Must a program notify the department when new direct treatment staff are added?
- WAC 388-60-0335 Who is considered a trainee for domestic violence perpetrator treatment programs?
- WAC 388-60-0345 May a trainee provide direct treatment services to participants?
- WAC 388-60-0355 Do treatment programs need a supervisor?
- WAC 388-60-0365 Who may provide supervision of direct treatment staff in a domestic violence perpetrator treatment program?
- WAC 388-60-0375 Must a supervisor always be on the premises of the treatment program?
- WAC 388-60-0385 Must the treatment program have staff supervision policies?
- WAC 388-60-0395 What are the requirements for staff orientation?
- WAC 388-60-0405 What are the continuing professional education requirements for all direct treatment program staff?
- WAC 388-60-0415 Is a treatment program required to cooperate with local domestic violence victim programs?
- WAC 388-60-0425 Does a treatment program need knowledge of the domestic violence laws and justice system practices?
- WAC 388-60-0435 What is the process to apply for certification of a treatment program?
- WAC 388-60-0445 What is the application fee for certification?
- WAC 388-60-0455 What documentation must a program submit before the department may certify the program?
- WAC 388-60-0465 What happens after a program turns in an application to the department?
- WAC 388-60-0475 Will a certificate be issued if the treatment program meets the standards?
- WAC 388-60-0485 What happens if a treatment program does not meet the standards?
- WAC 388-60-0495 What records must the department keep regarding certified domestic violence perpetrator programs?
- WAC 388-60-0505 How often must a domestic violence perpetrator treatment program reapply for certification?
- WAC 388-60-0515 What must a program do to apply for recertification of their domestic violence perpetrator treatment program?
- WAC 388-60-0525 What must the application packet for renewal of the certification of a domestic violence perpetrator program include?
- WAC 388-60-0535 How does the department decide that a program should continue to be certified?
- WAC 388-60-0545 Is there a formal process if a treatment program wishes to appeal a denial of certification or recertification?
- WAC 388-60-0555 Does the department have an advisory committee for domestic violence perpetrator treatment?
- WAC 388-60-0565 What is the role of the advisory committee?
- WAC 388-60-0575 Who are the advisory committee members and how are they chosen?
- WAC 388-60-0585 How long is the appointed term for an advisory committee member?
- WAC 388-60-0595 May advisory committee members be replaced before their term expires?
- WAC 388-60-0605 Are expenses for advisory committee members reimbursed?
- WAC 388-60-0615 Does the department investigate complaints about domestic violence perpetrator treatment programs?
- WAC 388-60-0625 Who may request an investigation of a certified domestic violence perpetrator treatment program?
- WAC 388-60-0635 Does the department notify a treatment program that the department has received a complaint?
- WAC 388-60-0645 May DSHS begin an investigation of a treatment program without receiving a complaint?
- WAC 388-60-0655 What is included in an investigation?

- WAC 388-60-0665 Is there a time limit for the department to complete its investigation of a complaint?
- WAC 388-60-0675 Does the department put the results of the investigation in writing?
- WAC 388-60-0685 What action may the department take regarding a program's certification if a complaint is founded?
- WAC 388-60-0695 Does DSHS notify a treatment program of its decision to take corrective action?
- WAC 388-60-0705 What information must the department give a program if it takes action that affects the program's certification status?
- WAC 388-60-0715 What happens if a treatment program refuses to remedy the problems outlined in the complaint findings?
- WAC 388-60-0725 What if the director of a domestic violence perpetrator treatment program disagrees with the corrective action decision?
- WAC 388-60-0735 Does the department notify the person that made the complaint of the results of the investigation?
- WAC 388-60-0745 What must the treatment program do after notification that its certification has been suspended or revoked?
- WAC 388-60-0755 What happens if the program has other licenses or certificates?

WSR 18-06-046**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed March 1, 2018, 4:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-166.

Title of Rule and Other Identifying Information: The department is proposing to amend and repeal existing sections and create one new section in chapter 388-832 WAC, Individual and family services program.

Hearing Location(s): On April 24, 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 April 25, 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., April 24, 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 April 10, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to chapter 388-832 WAC remove references to the individual and family services (IFS) request list, add required approval from the deputy assistant secretary or designee for a community service grant project, and limit community service grant projects to available funding. Other proposed amendments clarify program requirements, eliminate unnecessary section divisions, and combine section content.

Reasons Supporting Proposal: Under SSB 6387 (2014), the legislature directed the department to create a request list. The developmental disabilities administration no longer requires clients to be added to the IFS request list. Removing references to the IFS request list allows people to access one-time awards and emergency services. Adding prior approval requirements and limits to community service grants clarifies the process related to these grants.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.161.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Lonnie Keese, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1529.

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 Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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: The proposed amendments impose no new or disproportionate costs on small businesses, so a small business economic impact statement is not required.

February 28, 2018
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0001 What definitions apply to this chapter? The following definitions apply to this chapter:

"**Agency provider**" means a ~~((licensed and/or ADSA certified business that is contracted with ADSA or a county to provide DDD services (e.g., personal care, respite care, residential services, therapy, nursing, employment, etc.)))~~ long-term care worker who works for a home care agency.

"**Allocation**" means ~~((an amount of))~~ needs-based funding available to ((the)) a client and the client's family for a maximum of twelve months ((-based upon assessed need)).

"**Authorization**" means ~~((DDD))~~ developmental disabilities administration (DDA) funding approval ((of funding)) for a service ((as)) identified in ((the individual support plan or evidence of payment of)) a client's person-centered service plan.

~~((("Back-up caregiver" is a person who has been identified as an informal caregiver and is available to provide assistance as an informal caregiver when other caregivers are unavailable.))~~

"**Caregiver**" means a person who provides formal (paid), informal (unpaid), or primary (paid or unpaid) support.

"**Client**" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services ~~((by the division))~~ from DDA under chapter 71A.16 RCW.

~~((("DDD")))~~ "**DDA**" means the ~~((division of))~~ developmental disabilities ((-a division within the aging and disability services)) administration ((ADSAs)) within the department of social and health services (DSHS).

"**Department**" means the department of social and health services (DSHS).

~~((("Emergency" means the client's health or safety is in jeopardy.))~~

"**Family**" means ~~((relatives))~~ a relative who ((live in the same home)) lives with the ((eligible)) client. ((Relatives include)) A relative includes the client's spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"**Family home**" means the residence where ~~((you))~~ the client and ((your relatives)) the client's family live.

~~((("Formal caregiver" is a person/agency who receives payment from DDD to provide a service.))~~

"**Individual and family services contract**" means a contract between ~~((DDD))~~ DDA and the family to reimburse the family for the purchase of goods and services.

"**Individual provider**" means an individual who is contracted with ~~((DDD))~~ DDA to provide medicaid state plan personal care or medicaid waiver personal care, respite care, or attendant care services.

~~((("Individual support")))~~ Person-centered service plan" or ((("ISP"))) "PCSP" is a document that authorizes ((the DDD)) DDA-paid services ((to)) that meet ((a)) the client's needs identified in the ((DDD)) client's DDA assessment.

~~((("Informal caregiver" is a person who provides supports without payment from DDD for a service.))~~

"**Legal guardian**" means a person/agency, appointed by a court, which is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal

guardian for their child until the child reaches the age of eighteen.

~~((("Pass-through contract" means a contract between DDD and a third party to reimburse the third party for the purchase of goods and services.))~~

"**Primary caregiver**" is the formal or informal caregiver who provides the most support.

"**Residential habilitation center**" or "**RHC**" is a state operated facility certified to provide ICF/MR and/or nursing facility level of care for persons with developmental disabilities per chapter 71A.20 RCW.)

"**Significant change**" means ~~((changes))~~ a change in ((your)) a client's medical condition, caregiver status, behavior, living situation, or employment status.

"**State-funded ((services))**" means ~~((services that are))~~ a service or program funded entirely with state dollars.

"**State supplementary payment**" or "**SSP**" means a state paid cash assistance program for certain ~~((DDD))~~ DDA clients eligible for supplemental security income per chapter 388-827 WAC.

"**You**" means the client.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0005 What is the state-funded individual and family services program? The ~~((("state-funded individual and family services (IFS) program ((IFS program)) is a ((state-only funded)) program that((:))~~

~~((1) Provides an array of))~~ purchases select goods and services to support eligible clients and their families ((to help maintain and stabilize the family unit; and

~~((2) Replaces:~~

~~((a) The family support opportunity program (WAC 388-825-200 through 388-825-242);~~

~~((b) The traditional family support program (WAC 388-825-252 through 388-825-256);~~

~~((c) The family support pilot program (WAC 388-825-500 through 388-825-595); and~~

~~((d) Other family support rules (WAC 388-825-244 through 388-825-250)).~~

AMENDATORY SECTION (Amending WSR 16-12-010, filed 5/19/16, effective 6/19/16)

WAC 388-832-0015 ((Am-1) Who is eligible for the state-funded IFS program? (1) The ~~((IFS))~~ state-funded individual and family services (IFS) program and ((SSP)) state supplementary payments (SSP) in lieu of IFS ((is not open)) are closed to new enrollment.

(2) If you ~~((were))~~ have been continuously enrolled in the state-funded IFS program ((before June 4)) since May 31, 2015, you ((are eligible to)) may remain on the ((IFS)) program if you ((meet the following criteria)):

(a) ~~((You))~~ Are ((currently an eligible)) a developmental disabilities administration (DDA) client ((of DDA));

(b) ~~((You))~~ Live ((in your)) with family ((home));

(c) ~~((You))~~ Are ((not eligible to enroll in a)) ineligible for DDA's home and community based services waiver ((defined in)) program under chapter 388-845 WAC;

(d) ~~((You are currently enrolled in the IFS program;~~

~~(e) You~~) Are age three or older;

~~((f) You have been assessed as having a)~~ (e) Need ~~((for))~~ IFS program services, as ~~((listed))~~ identified in ~~((WAC 388-832-0140))~~ your person-centered service plan; ~~((and~~

~~(g) You are not receiving a DDA adult or child residential))~~ (f) Use an IFS program service at least once per plan year;

(g) Complete a DDA reassessment under WAC 388-828-1500;

(h) Participate with DDA in your service planning; and

(i) Are not receiving DDA residential services or licensed foster care services.

(3) If you are ~~((a parent who is a client of DDA, you are))~~ eligible ~~((to remain on))~~ for the state-funded IFS program ~~((in order to promote the integrity of the family unit until your next assessment, provided:~~

(a) You meet the criteria in subsections (2)(a) through (f) of this section; and

(b) Your minor child who lives in your home is at risk of being placed up for adoption or into foster care)), you are not guaranteed to receive state-funded IFS program services.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0065 What happens if I ~~((go into a temporary))~~ am in an out-of-home placement~~((, will I be eligible for IFS upon my return home))~~? (1) If you are ~~((disenrolled))~~ in ~~((the IFS program due to))~~ an out-of-home placement for more than ninety consecutive days, the developmental disabilities administration (DDA) must disenroll you ~~((may request reinstatement in))~~ from the state-funded IFS program ~~((once you return to))~~ before your next annual assessment, unless you are placed in a family member's home.

(2) ((You may make this request by contacting your DDD case manager.

(3) Your case manager will schedule an assessment with you and, if you meet all the eligibility criteria described in WAC 388-832-0015, have an assessed need, and funding is available, you may receive an IFS program allocation)) Unless you are placed in a family member's home, you must not receive state-funded IFS program services while you are in an out-of-home placement.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0067 Are my children eligible for the state-funded IFS program services~~((, if I am a client of DDD))~~? If you are a ~~((parent with a developmental disability and a client of DDD))~~ client of the developmental disabilities administration (DDA), your ~~((children))~~ child may be eligible for state-funded IFS program services if ~~((funding is available and))~~ your ~~((children))~~ child:

(1) ((Are ages birth through seventeen years of)) Is under age eighteen;

(2) ((Are)) Lives with you; and

(3) Is at risk of out-of-home placement~~((; and~~

(3) Live with you)).

AMENDATORY SECTION (Amending WSR 14-07-028, filed 3/10/14, effective 4/10/14)

WAC 388-832-0130 ~~((What is))~~ How does DDA determine the amount of ~~((the))~~ my state-funded IFS program annual allocation ~~((my family is going to receive))~~?

(1) The ~~((DDD assessment, described in chapter 388-828 WAC, with))~~ developmental disabilities administration (DDA) determines ~~((your level of need:))~~ the amount of your state-funded individual and family services (IFS) program annual allocation~~((s are identified in))~~ under WAC 388-828-9140.

(2) If you are eligible for private-duty nursing under chapter 388-106 WAC, or the medically intensive children's program under chapter 182-551 WAC, DDA will adjust your annual allocation under WAC 388-828-9100, WAC 388-828-9120, and WAC 388-828-9140.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0136 ~~((If))~~ How do I ~~((have a family support reimbursement contract, may DDD ask me to verify my purchases through reviewing receipts))~~ receive reimbursement for a purchase under the state-funded IFS program? To receive reimbursement for a purchase under the state-funded individual and family services (IFS) program, you must:

(1) ((If you)) Have a family support reimbursement contract~~((, you must first need))~~ with the developmental disabilities administration (DDA);

(2) Obtain prior approval for the purchase from your ~~((DDD))~~ DDA regional administrator or designee;

(3) Submit the receipt to your case manager ~~((and then DDD will ask you to verify your purchases through reviewing receipts:))~~ no later than:

~~((2))~~ You must submit receipts to your case manager whenever you are asking for reimbursement.

~~((3))~~ Your request for reimbursement must be received within) (a) Ninety days ~~((of))~~ from the date ~~((that the service was received))~~ of purchase; and ~~((no later than))~~

(b) Thirty days after the end of your ~~((allocation))~~ plan year.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0140 What services are available through the state-funded IFS program? ~~((The services available in the IFS program are limited to the following:~~

(1) Respite care (WAC 388-832-0143 through 388-832-0160);

(2) Therapies (WAC 388-832-0170 through 388-832-0180);-

(a) Physical therapy (PT);

(b) Occupational therapy (OT); and

(c) Speech, language and communication therapy.

~~((3))~~ You may receive any combination of the following services - up to your state-funded individual and family services (IFS) annual allocation - but only if the service

addresses a need identified in your person-centered service plan:

~~(1) Architectural ~~(and vehicular modifications)~~ modification under WAC 388-832-0185 ~~((through 388-832-0189))~~;~~

~~((4) Specialized medical equipment and supplies (WAC 388-832-0200 through 388-832-0210)) (2) Copays for medical and therapeutic services under WAC 388-832-0235;~~

~~((5) Specialized nutrition and clothing (WAC 388-832-0215 through 388-832-0225);~~

~~(6)) (3) Excess medical costs not covered by another source ~~((f))~~ under WAC 388-832-0165 ~~((through 388-832-0168))~~;~~

~~((7) Copays for medical and therapeutic services (WAC 388-832-0235 through 388-832-0245);~~

~~(8) Transportation (WAC 388-832-0250 through 388-832-0260);~~

~~(9) Training and counseling (WAC 388-832-0265 through 388-832-0275);~~

~~(10) Behavior management (WAC 388-832-0280 through 388-832-0290)) (4) Occupational therapy under WAC 388-832-0170;~~

~~((11)) (5) Parent ~~(*)~~ and sibling education ~~((f))~~ under WAC 388-832-0300 ~~((through 388-832-0310))~~;~~

~~((12)) (6) Physical therapy under WAC 388-832-0170;~~

~~(7) Positive behavior support and consultation under WAC 388-832-0280;~~

~~(8) Recreational opportunities ~~((f))~~ under WAC 388-832-0315 ~~((through 388-832-0325))~~; ~~(and~~~~

~~(13) Community service grants (WAC 388-832-0370 through 388-832-0375)) (9) Respite care under WAC 388-832-0143;~~

~~(10) Specialized medical equipment and supplies under WAC 388-832-0200;~~

~~(11) Specialized nutrition and clothing under WAC 388-832-0215;~~

~~(12) Speech, language, and communication therapy under WAC 388-832-0170;~~

~~(13) Training and counseling under WAC 388-832-0265;~~

~~(14) Transportation under WAC 388-832-0250; and~~

~~(15) Vehicle modifications under WAC 388-832-0186.~~

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0143 What is respite care? Respite care is short-term, intermittent ~~((relief for persons normally providing))~~ care ~~((for individuals receiving IFS program services))~~ to relieve a family member who is your primary, paid care provider.

(2) Respite care may be provided in the settings described in WAC 388-845-1610.

(3) Qualified providers of respite care are described in WAC 388-845-1615.

(4) Respite care is limited to:

(a) Limits under chapter 388-845 WAC apply; and

(b) The amount of your state-funded individual and family services annual allocation.

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

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0165 What are ~~((considered))~~ excess medical costs ~~((not covered by another source))~~? (1) Excess medical costs are medical expenses ~~((incurred by))~~ for which you are responsible after ~~((medicaid or))~~ your private insurance and medicaid benefits have been ~~((accessed or when you do not have))~~ exhausted.

(2) The developmental disabilities administration (DDA) may pay excess medical ~~((insurance. This may include the following))~~ costs for a:

~~((1))~~ (a) Dental insurance premium;

(b) Dental service;

(c) Health insurance premium;

(d) Medical service;

(e) Prescription medication;

(f) Psychiatric service; and

(g) Skilled nursing service ~~((s (e.g., ventilation, catheterization, and insulin shots);~~

~~((2) Psychiatric services));~~

(3) ~~((Medical and dental services))~~ DDA may pay for excess medical costs directly to:

(a) A DDA-contracted provider;

(b) Your family member who has an individual and family services contract with DDA; or

(c) The department-contracted nurse who has provided skilled nursing services.

(4) The following limits apply to excess medical costs:

(a) The service must be of direct medical or remedial benefit to you and deemed medically necessary by your health care professional ~~((and an allowable medicaid covered expense));~~

~~((4) Prescriptions for medications; and/or~~

~~((5))~~ (b) Therapies included under WAC 388-832-0170 must not be paid under excess medical costs.

(c) Medical and dental premiums are excluded for family members other than the DDA-eligible client.

(d) Prior approval by your regional administrator or designee is required.

(e) Reimbursement will not occur unless DDA receives receipts within ninety days of the date of service.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0170 What therapies may I receive?

(1) The therapies you may receive ~~((are))~~ include:

~~((1))~~ (a) Physical therapy;

~~((2))~~ (b) Occupational therapy; and ~~((or~~

~~((3))~~ (c) Speech, hearing, and language therapy.

(2) To be a qualified provider of therapies, the provider must be:

(a) A certified, registered, or licensed therapist as required by law; and

(b) Contracted with the developmental disabilities administration (DDA) for the service they provide.

(3) The following limits apply to the therapies you may receive:

(a) DDA determines the amount of therapy services you will receive based on your assessed needs, annual allocation, and information received from your therapist and DDA may require a second opinion from a DDA-selected therapist;

(b) DDA does not pay for treatment that is experimental or investigational under WAC 182-531-0050; and

(c) Additional therapy may be authorized as a service only after you have exhausted resources available to you under medicaid, private health insurance, or school.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0185 What are architectural (~~and vehicular~~) modifications? (1) Architectural (~~and vehicular~~) modifications are physical adaptations to (~~the~~) your home (~~and vehicle of the individual~~) to:

(a) Ensure the health, welfare, and safety of (~~the client and or~~) you, your caregiver, or both; or

(b) Enable (~~a client~~) you, who (~~would~~) may otherwise require a more restrictive environment, to function with greater independence in (~~the home or in the~~) your home and community.

(2) Examples of architectural modifications include (~~the following~~):

(a) (~~Installation of~~) Installing ramps and grab bars;

(b) Widening of doorways;

(c) (~~Modification of~~) Bathroom (~~facilities~~) modifications;

(d) Installing (~~specialized~~) electrical (~~and/or~~) or plumbing systems necessary to accommodate the specialized medical equipment and supplies that are necessary for (~~the welfare of the individual~~) your welfare;

(e) (~~Repairs for~~) Repairing damage(~~s~~) to (~~the client's~~) your residence as a result (~~of the client's~~) your disability up to the balance of (~~the client's~~) your allocation; (~~or~~) and

(f) (~~Repairs to~~) Repairing architectural modifications if necessary for (~~client~~) your safety.

(3) (~~Vehicular modifications include the following~~):

(a) Wheel chair lifts;

(b) Strap downs;

(c) Other access modifications; or

(d) ~~Repairs and maintenance to vehicular modifications if necessary for client safety~~) The provider making architectural modifications must be contracted with the developmental disabilities administration (DDA) and be a registered contractor under chapter 18.27 RCW.

(4) The following limits apply to architectural modifications:

(a) Prior approval by the regional administrator or designee is required.

(b) Architectural modifications are excluded if they are of general utility without direct medical or remedial benefit to you, such as carpeting, linoleum, tile, hardwood flooring, decking, roof repair, air conditioning, and fencing for the yard.

(c) Architectural modifications must not add to the square footage of the home.

(d) DDA requires evidence that you have exhausted your private insurance, medicaid benefits, and benefits from the division of vocational rehabilitation (DVR) before authorizing architectural modifications.

(e) Architectural modifications must be the most cost-effective modification based on a comparison of contractor bids as determined by DDA.

(f) DDA may require an occupational therapist, physical therapist, or construction consultant to review and recommend an appropriate architectural modification statement of work before you solicit bids or purchase architectural modifications.

(g) Deteriorated condition of the dwelling or other remodeling projects in progress in the dwelling may prevent or limit some or all architectural modifications at the discretion of DDA.

(h) Location of the dwelling in a flood plain, landslide zone, or other hazardous area may limit or prevent any architectural modifications at the discretion of DDA.

(i) Written consent from your landlord is required before starting any architectural adaptations for rental property. The landlord must not require removal of the architectural modification at the end of your tenancy as a condition of the landlord approving the architectural modification.

(j) Damage repairs are limited to the cost of restoration to original function. If the damage resulted from your behavior, the behavior must be addressed before the damages are repaired;

(k) The following are excluded from architectural modifications:

(i) Repairs to personal property, such as furniture and appliances;

(ii) Fence construction or repairs; and

(iii) Carpet installation or replacement.

NEW SECTION

WAC 388-832-0186 What are vehicle modifications?

What are vehicle modifications?

(1) Vehicle modifications are physical adaptations to your vehicle to:

(a) Ensure the health, welfare, and safety of you, your caregiver, or both; or

(b) Enable you, who may otherwise require a more restrictive environment, to function with greater independence in your home and community.

(2) Examples of vehicle modifications include:

(a) Wheel chair lifts;

(b) Strap downs;

(c) Other access modifications; and

(d) Repairs and maintenance to vehicle modifications if necessary for your safety.

(4) The provider making vehicle modifications must be a vehicle adaptive equipment vendor contracted with the developmental disabilities administration (DDA) to provide this service.

(5) The following limits apply to vehicle modifications:

(a) Prior approval by the regional administrator or designee is required.

(b) DDA requires evidence that you have exhausted your private insurance, medicaid benefits, and benefits from the division of vocational rehabilitation (DVR) before authorizing this service.

(c) Vehicle modifications must be the most cost-effective modification based on a comparison of contractor bids as determined by DDA.

(d) Clinical and support needs for vehicle modifications are limited to those identified in your DDA assessment and documented in your person-centered service plan.

(e) Modifications will only be approved for a vehicle that serves as your primary means of transportation and is owned by you, your family, or both.

(f) DDA requires your treating professional's written recommendation regarding your need for vehicle modifications. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(g) DDA may require a second opinion from a DDA-selected provider.

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

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0200 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are ((designed to assist clients to)) items that help you:

(a) Increase or maintain ((their abilities)) ability to perform ((their)) activities of daily living; or

(b) Perceive, control, or communicate with the environment in which ((they)) you live.

(2) Specialized medical equipment and supplies may include durable and nondurable equipment that are specialized or adapted, and generally are not useful to a person in the absence of illness, injury, or disability.

(3) ((Also included are)) The developmental disabilities administration (DDA) may cover items and services necessary to maintain the proper functioning of the equipment and supplies.

(4) The provider of equipment and supplies must be an equipment supplier contracted with DDA or a parent who has a DDA contract.

(5) The following limits apply to specialized medical equipment and supplies:

(a) Specialized medical equipment and supplies - except for incontinence supplies such as diapers, disposable pads, and wipes - require prior approval by the DDA regional administrator or designee.

(b) DDA may require a second opinion by a DDA-selected provider.

(c) Items reimbursed with state funds must be in addition to any specialized medical equipment and supplies furnished under medicaid or private insurance.

(d) DDA does not cover medications or vitamins.

(e) DDA only covers specialized medical equipment and supplies that are:

(i) Of direct medical or remedial benefit to you; and

(ii) Necessary as a result of your disability.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0215 What are specialized nutrition and specialized clothing? (1) Specialized nutrition is ((specialized formulas or specially)) prepared ((foods for which a written recommendation has been provided by a qualified and appropriate professional and when it)) food that constitutes fifty percent or more of ((the)) a person's caloric intake ((e.g.)). Specialized nutrition must be recommended by a qualified professional, such as a licensed physician or registered dietician((?)).

(2) Specialized clothing is nonrestrictive clothing adapted for a physical disability((excessive wear)). Specialized clothing((or specialized footwear for which a written recommendation has been provided)) must be recommended by a qualified ((and appropriate)) professional ((e.g.)), such as a podiatrist, physical therapist, or behavior specialist((?)).

(3) Prior approval by regional administrator or designee is required.

(4) DDA does not cover vitamins or supplements.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0235 What are copays for medical and therapeutic services? (1) Copays are fixed fees that subscribers to a medical plan must pay to use specific medical or therapeutic services covered by the plan. These services must have been deemed medically necessary by your health care professional.

(2) Medical and therapeutic copays may be a reimbursable expense through a developmental disabilities administration (DDA) services contract.

(3) The copays must be for your medical or therapeutic needs.

(4) DDA does not cover vitamins or supplements.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0250 What are transportation services? (1) Transportation services ((are)) is per diem or mileage reimbursement((s)) to a provider ((when the)) for your transportation ((is required and specified in the individual support plan. This service is available for all IFS program services if the cost and responsibility for transportation is not already included in your provider's contract and payment)).

(1) ((1) Transportation provides you access to IFS program services specified by your individual support plan)) (2) The developmental disabilities administration (DDA) may reimburse a provider for transportation services if:

(a) The transportation is to or from a state-funded individual and family services (IFS) program service;

(b) The transportation need is identified in your person-centered service plan (PCSP);

(c) The provider is not contracted to receive transportation reimbursement; and

(d) All other transportation options have been exhausted.

((2) Whenever possible you must use family, neighbors, friends, or community agencies that can provide this service without charge)) (3) The provider of transportation services must be an individual or agency contracted with DDA to provide transportation services.

(4) Transportation services may be a reimbursable expense through a DDA contract.

(5) The following limits apply to transportation services:

(a) Transportation services does not cover the purchase or lease of a vehicle; and

(b) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(6) Per diem costs may be reimbursed utilizing the state rate to access medical services if you and one family member must travel over one hundred fifty miles one way.

(7) DDA may reimburse you for air ambulance costs due to an emergency - up to your state-funded IFS annual allocation - if you have exhausted all other resources such as your private insurance and medicaid.

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

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0265 What is training and counseling? (1) Training and counseling is professional assistance provided to families to ((better)) help meet ((the)) your specific needs ((of the individual)) as outlined in ((their ISP)) your person-centered service plan (PCSP) including:

((1)) (a) Health and medication monitoring;

((2)) (b) Positioning and transfer;

((3)) (c) Augmentative communication systems; and

((4)) (d) Family counseling.

(2) To provide training and counseling, a provider must be:

(a) Contracted with the developmental disabilities administration (DDA) for the service specified in the client's PCSP; and

(b) One of the following licensed, registered, or certified professionals:

(i) Audiologist;

(ii) Certified American Sign Language instructor;

(iii) Certified dietician;

(iv) Licensed practical nurse;

(v) Marriage and family therapist;

(vi) Mental health counselor;

(vii) Nutritionist;

(viii) Occupational therapist;

(ix) Physical therapist;

(x) Psychologist;

(xi) Registered counselor;

(xii) Registered nurse;

(xiii) Sex offender treatment provider;

(xiv) Social worker; or

(xv) Speech and language pathologist.

(3) The following limits apply to training and counseling:

(a) DDA does not pay for attendance or room and board; and

(b) DDA does not pay for conference registration.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0280 What is positive behavior ((management)) support and consultation? (1) Positive behavior ((management)) support and consultation is the development and implementation of programs designed to support ((the client)) you using ((positive behavioral techniques. Behavior management programs help the client decrease aggressive, destructive, sexually inappropriate or other behaviors that compromises the client's ability to remain in the family home, and develop strategies for effectively relating to caregivers and other people in the client's life)):

(a) Individualized strategies for effectively relating to caregivers and other people in your life; and

(b) Direct interventions with you to decrease aggressive, destructive, sexually inappropriate, or other behaviors that compromise your ability to remain in the community.

(2) The provider of positive behavior support and consultation must be one of the following professionals contracted with the developmental disabilities administration (DDA) and be duly licensed, registered or certified as a:

(a) Counselor under chapter 18.19 RCW;

(b) Marriage and family therapist;

(c) Mental health counselor;

(d) Physician assistant working under the supervision of a psychiatrist;

(e) Polygrapher;

(f) Psychiatric advanced registered nurse practitioner;

(g) Psychiatrist;

(h) Psychologist;

(i) Registered nurse (RN) or licensed practical nurse (LPN);

(j) Sex offender treatment provider; or

(k) Social worker.

(3) The following limits apply to positive behavior support and consultation:

(a) DDA and your treating professional will determine the need and amount of service you may receive, which is limited to the amount of your annual allocation.

(b) DDA may require a second opinion from a DDA-selected provider.

(c) DDA does not pay for services that are experimental or investigational under WAC 182-531-0050.

(d) Providers must not use methods that are threatening, painful, isolating, or that occur in a locked setting.

(e) Psychological testing is not allowed.

(f) Positive behavior support and consultation requires prior approval by the regional administrator or designee.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0300 What is parent(+) and sibling education? (1) Parent(+) and sibling education is ((class)) training for parents and siblings who have a family member with a developmental disability offering relevant topics. ((Examples of topics could be)) Training may include coping with family stress, addressing ((your)) a child's behavior, managing the family's daily schedule, or advocating for ((your)) a child with a developmental disability.

(2) The provider of parent and sibling education must be providing a service in your person-centered service plan (PCSP), contracted with DDA, and licensed, registered, or certified as:

- (a) An audiologist;
- (b) An American Sign Language instructor;
- (c) A certified dietician;
- (d) A licensed practical nurse;
- (e) A marriage and family therapist;
- (f) A mental health counselor;
- (g) A nutritionist;
- (h) An occupational therapist;
- (i) A physical therapist;
- (j) A psychologist;
- (k) A registered counselor;
- (l) A registered nurse;
- (m) A sex offender treatment provider;
- (n) A social worker; or
- (o) A speech and language pathologist.

(3) Parent and sibling education may also be provided by an advocacy organization.

(4) Parent and sibling education may be a reimbursable expense through a DDA contract, or paid directly to the contracted provider.

(5) The following limits apply to parent and sibling education:

(a) Parent and sibling education does not include conference fees or lodging.

(b) Viewing videos at home by your parent or sibling does not meet the definition of parent or sibling education.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0315 What are recreational opportunities? (1) Recreational opportunities are ((leisure)) activities ((that may be available to children and adults with a developmental disability)), such as summer camps, ((YMCA activities;)) day trips, or typical activities available in your community.

(2) Recreational opportunities may include memberships in civic groups, clubs, crafting classes, or classes outside of K-12 school curriculum or sports activities.

(3) Recreational opportunities may be a reimbursable expense through a developmental disabilities administration (DDA) contract.

(4) The following limits apply to recreational opportunities:

(a) Recreational opportunities must occur in your community or an out-of-state bordering city under WAC 388-832-0333.

(b) DDA does not pay for recreational opportunities that may pose a risk to you or the community at large.

(c) DDA does not pay for supplies or materials related to recreational opportunities.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0333 What ((restrictions)) limits apply to ((the)) state-funded IFS program services? The following ((restrictions)) limits apply to the state-funded individual and family services (IFS) program ((services)):

(1) State-funded IFS program services are limited to available funding.

(2) A state-funded IFS program service must address an unmet need identified in your person-centered service plan (PCSP).

(3) Any item reimbursed with state funds under the IFS program must not duplicate or replace items provided to you under private insurance or medicaid.

(4) State-funded IFS program services are authorized only after you have ((accessed what is available to you under medicaid, including medicaid personal care, and any other private health insurance plan, school, division of vocational rehabilitation or child development services)) requested and have been denied other resources available to you through private insurance, school, the division of vocational rehabilitation, child development services, medicaid, including person care and community first choice, and other supports.

((2)) (5) All state-funded IFS program service payments must be agreed to by ((DDD)) you and ((you)) the developmental disabilities administration (DDA) in your ((ISP)) PCSP.

((3-DDD)) (6) DDA may contract directly with a service provider or parent for the reimbursement of goods or services purchased by the family member.

((4-DDD may)) (7) DDA does not pay for treatment ((determined by DSHS/MAA or private insurance to be)) that is experimental or investigational under WAC 182-531-0550.

(8) DDA does not cover vitamins or supplements.

((5)) (9) Your choice of qualified providers and services may be limited to the most cost-effective option that meets your assessed need.

((6) The IFS program must not pay for)) (10) Services must not be provided after ((the)) a client's death ((of the eligible client. Payment may occur after the date of death, but not the service)).

((7-DDD's)) (11) DDA's authorization period begins when you ((agree)) have agreed to be in the state-funded IFS program and ((have given written or verbal approval for)) your ((ISP. The period will last up to one year and may be renewed if you continue to need and utilize services)) PCSP has been approved.

(12) If you have not ((utilized the services within one year period you will be terminated from this)) accessed a state-funded IFS program service at least once per plan year, DDA will disenroll you from the state-funded IFS program.

~~((8))~~ (13) The state-funded IFS program must not pay for psychological evaluations or testing, or DNA testing.

~~((9) Supplies/materials related to recreation opportunities are the responsibility of the family))~~ (14) You may receive state-funded IFS program services in a recognized out-of-state bordering city on the same basis as in-state services. Recognized bordering cities include:

(a) Coeur d'Alene, Moscow, Sandpoint, Priest River, and Lewiston, Idaho, and

(b) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater, and Astoria, Oregon.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0335 What is a one-time award? (1) ~~A one-time (awards are payments to individuals and families who meet the IFS program eligibility requirements and have a one-time unmet need not covered by any other sources for which they are eligible.~~

(2) ~~One-time awards can only~~) award is a payment that must be used for architectural~~((vehicular))~~ or vehicle modifications, or specialized medical equipment and supplies.

(2) You may be eligible for a one-time award if:

(a) You have a one-time, unmet need;

(b) You are not currently authorized for the state-funded individual and family services (IFS) program or home and community based services waiver in your person-centered service plan (PCSP);

(c) You are at least three years old and live with family;

(d) The need is critical to the health or safety of you or your caregiver; and

(e) You and your family have no other resource to meet the need or your resources do not cover all of the expense.

(4) One-time awards must not exceed six thousand dollars in a twenty-four month period.

(5) One-time awards must be approved by the developmental disabilities administration's (DDA's) regional administrator or designee.

(6) Eligibility for a one-time award does not guarantee approval and authorization of the service by DDA because services are limited to available funding.

(7) You must have a DDA assessment before receiving a one-time award.

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

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0355 What is an emergency service? Emergency services are respite care, ~~((behavior management or))~~ nursing services, or positive behavior support and consultation in response to a single incident, situation, or short-term crisis.

(2) You may be eligible for emergency services if you are age three or older, live with your family, and:

(a) You lose your caregiver due to caregiver hospitalization or death;

(b) There are changes in your caregiver's mental or physical status resulting in your caregiver's inability to perform effectively for you; or

(c) There are significant changes in your emotional or physical condition that require emergency services.

(3) The provider of the service you require to meet your emergent need must meet the provider qualifications required to contract for that specific service under:

(a) WAC 388-832-0155 for respite;

(b) WAC 388-832-0285 for positive behavior support and consultation; and

(c) WAC 388-845-1705 for nursing.

(4) Funds are provided for a limited period not to exceed ninety days.

(5) All requests are reviewed and approved or denied by the regional administrator or designee.

(6) If you or a family situation requires more than ninety days of emergency services, the developmental disabilities administration (DDA) will review DDA services to determine if your need can be met through other services.

(7) You may receive an emergency service before completing a DDA assessment, however the regional administrator or designee may request a DDA assessment for you at any time.

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

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0370 What are ((the IFS)) community service grants? Community service grants are grants to agencies or individuals ~~((funded by the IFS program))~~ to promote community-oriented projects that benefit families. Community service grants may fund long-term or short-term projects that benefit children ~~((and/or))~~, adults, or both.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0375 How does a ((proposed)) proposal for a community service grant project qualify for funding? Community service grants are limited to available funding. To qualify for funding, a proposed project must be approved by the assistant secretary or designee and:

(1) Address one or more of the following topics:

(a) Provider support and development;

(b) Parent helping parent; or

(c) Community resource development for inclusion of all.

(2) Meet most of the following goals:

(a) Enable families to use generic resources which are integrated activities and/or resources community members typically have access to;

(b) Reflect geographic, cultural and other local differences;

(c) Support families in a variety of noncrisis-oriented ways;

(d) Prioritize support for unserved families;

- (e) Address the diverse needs of Native Americans, communities of color and limited or non-English speaking groups;
- (f) Be family focused;
- (g) Increase inclusion of persons with developmental disabilities;
- (h) Benefit families who have children or adults eligible for services from DDD and who do not receive other DDD paid services; and
- (i) Promote community collaboration, joint funding, planning and decision making.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0470 What are my appeal rights under the state-funded individual and family services program? ~~(1) You have the ((appeal rights described in WAC 388-825-100 through 388-825-165)) right to an administrative hearing under chapter 388-825 WAC.~~

(2) If the developmental disabilities administration (DDA) ends your state-funded individual and family services (IFS) program services, you will receive written notice of the decision explaining your administrative hearing rights.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-832-0007 What is the purpose of the individual and family services (IFS) program?
- WAC 388-832-0020 Will I be authorized to receive IFS services if I meet the eligibility criteria in WAC 388-832-0015?
- WAC 388-832-0022 What determines the allocation of funds available to me to purchase IFS services?
- WAC 388-832-0023 If I qualify for another DDD service, will my IFS program be reduced or terminated?
- WAC 388-832-0024 If I participate in the IFS program, will I be eligible for services through the DDD home and community based services (HCBS) waiver?
- WAC 388-832-0025 Am I eligible for the IFS program if I currently receive other DDD paid services?
- WAC 388-832-0045 What if there are two or more family members who are eligible for the IFS program?
- WAC 388-832-0050 How do I request IFS program services?

- WAC 388-832-0055 How long do I remain eligible for the IFS program?
- WAC 388-832-0060 May DDD terminate my eligibility for the IFS program?
- WAC 388-832-0070 What is the IFS program request list?
- WAC 388-832-0072 Who is eligible to be on the IFS program request list?
- WAC 388-832-0075 Do I have to have a DDD assessment before I can be added to the IFS request list?
- WAC 388-832-0080 How or when am I taken off the IFS request list?
- WAC 388-832-0082 If the DDD assessment determines I am not eligible for the IFS program, may I remain on the IFS request list?
- WAC 388-832-0087 What happens next if I am selected from the IFS program request list?
- WAC 388-832-0090 If I currently receive funding from the traditional family support program, the family support opportunity program or the family support pilot program, will I qualify for the IFS program?
- WAC 388-832-0091 If I currently receive funding from the traditional family support program, the family support opportunity program or the family support pilot program, will that funding continue until my next assessment?
- WAC 388-832-0095 What happens if DDD finds me ineligible for the IFS program?
- WAC 388-832-0100 What assessment will DDD use to assess my need?
- WAC 388-832-0110 Will DDD ask about my family's income?
- WAC 388-832-0113 Will my IFS allocation be impacted by my income?
- WAC 388-832-0114 What is family income?
- WAC 388-832-0115 How is an individual's access to DDD paid services affected if family income information is not provided?
- WAC 388-832-0123 Will my IFS allocation be impacted if I am eligible for private duty nursing or the medically intensive children's program?

WAC 388-832-0125	Will my IFS allocation be impacted if I am eligible for the community options programs entry system (COPES)?	WAC 388-832-0255	Who is a qualified provider for transportation services?
WAC 388-832-0127	What if I have assessed needs that cannot be met by the IFS program?	WAC 388-832-0260	Are there limitations to the transportation services I can receive?
WAC 388-832-0128	When is the individual support plan effective?	WAC 388-832-0270	Who is a qualified provider for training and counseling?
WAC 388-832-0132	May I request to exceed the level at which I was assessed?	WAC 388-832-0275	Are there limitations to the training and counseling?
WAC 388-832-0135	How may my family use its IFS program allocation?	WAC 388-832-0285	Who is a qualified provider of behavior management?
WAC 388-832-0137	May I use my allocation over a two-year period for large costly expenditures?	WAC 388-832-0290	Are there limits to behavior management?
WAC 388-832-0139	If I have a significant change assessment, what happens to my allocation?	WAC 388-832-0305	Who are qualified providers for parent/sibling education?
WAC 388-832-0145	Who is eligible to receive respite care?	WAC 388-832-0308	How is parent/sibling education paid?
WAC 388-832-0150	Where can respite care be provided?	WAC 388-832-0310	Are there limitations to parent/sibling education?
WAC 388-832-0155	Who are qualified providers of respite care?	WAC 388-832-0320	How are recreational opportunities paid for?
WAC 388-832-0160	Are there limits to the respite care I receive?	WAC 388-832-0325	Are there limitations to recreation opportunities?
WAC 388-832-0166	How are excess medical costs paid?	WAC 388-832-0330	Do I have a choice of IFS program services?
WAC 388-832-0168	Are there limits to excess medical costs?	WAC 388-832-0331	May I receive IFS program services out-of-state?
WAC 388-832-0175	Who is a qualified therapist?	WAC 388-832-0332	May I choose my provider?
WAC 388-832-0180	Are there limits to the therapy I may receive?	WAC 388-832-0460	How will DDD notify me of decisions?
WAC 388-832-0190	Who is a qualified provider for architectural and vehicular modifications?		
WAC 388-832-0195	What limits apply to architectural and vehicular modifications?		
WAC 388-832-0205	Who are qualified providers of equipment and supplies?		
WAC 388-832-0210	Are there limitations to my receipt of equipment and supplies?		
WAC 388-832-0220	How do I pay for specialized nutrition and specialized clothing?		
WAC 388-832-0225	Are there limits for specialized nutrition and specialized clothing?		
WAC 388-832-0240	How do I pay for medical and therapeutic copays?		
WAC 388-832-0245	Are there limits to medical and therapeutic copays?		

WSR 18-06-094
PROPOSED RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed March 6, 2018, 5:15 p.m.]

Original Notice.

Title of Rule and Other Identifying Information: SWCAA 476-030 Definitions. This is an existing section containing definitions for terms and words directly relevant to the regulation.

SWCAA 476-040 Asbestos Survey Requirements. This is an existing section describing the requirements for asbestos surveys.

SWCAA 476-050 Notification Requirements and Fees. This is an existing section containing notification requirements for asbestos projects.

SWCAA 476-060 Procedures for Asbestos Emission Control. This is an existing section describing required measures to control emissions from asbestos projects.

SWCAA 476-070 Disposal of Asbestos-Containing Waste Material. This is an existing section containing

requirements for disposal and storage of asbestos containing waste material.

SWCAA 476-080 Demolition By Intentional Burning. This is an existing section containing requirements for fire training exercises that intentionally demolish a structure by burning.

Hearing Location(s): On May 3, 2018, at 3:00 p.m., at the Office of Southwest Clean Air Agency (SWCAA), 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682.

Date of Intended Adoption: June 7, 2018.

Submit Written Comments to: Gerald Strawn, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, email gerry@swcleanair.org, fax 360-576-0925, by May 4, 2018.

Assistance for Persons with Disabilities: Contact Tina Hallock, phone 360-574-3058, email tina@swcleanair.org, by May 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 476-030 Definitions. The proposed rule change adds additional definitions necessary for implementation and updates existing definitions.

SWCAA 476-040 Asbestos Survey Requirements. The proposed rule change clarifies and updates existing asbestos inspection and sampling procedures, adds alternate inspection and sampling procedures, and adds asbestos inspection reporting requirements to require detailed inspection information, as well as details of identified asbestos-containing materials.

SWCAA 476-050 Notification Requirements and Fees. The proposed rule change reduces the required notification period from ten business days to ten calendar days for both the Notice of Intent to Remove Asbestos and Notification of Demolition, adds abandoned asbestos-containing materials procedures, and adds State of Emergency procedures for storms, floods, or other disasters. Minor clarifications and updates will be made to existing language.

SWCAA 476-060 Procedures for Asbestos Emission Control. The proposed rule change adds a provision for storage of asbestos-containing materials in a leak tight container. Minor clarifications and updates will be made to existing language.

SWCAA 476-070 Disposal of Asbestos-Containing Waste Material. The proposed rule change adds waste tracking requirements for the disposal of any asbestos-containing waste materials. Minor clarifications and updates will be made to existing language.

SWCAA 476-080 Demolition By Intentional Burning. The proposed rule change increases the notification period for fire training burns from five calendar days to ten calendar days. Minor clarifications and updates will be made to existing language.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Gerald Strawn, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058; Implementation and

Enforcement: Uri Papish, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058.

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. SWCAA is an air pollution control authority and is not included in the list of affected agencies provided in RCW 34.05.328 (5)(a). SWCAA is not voluntarily making the rule applicable.

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

Is exempt under RCW 70.94.141(1).

Explanation of exemptions: Pursuant to RCW 70.94.141 (1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

March 6, 2018

Uri Papish

Executive Director

AMENDATORY SECTION (Amending WSR 01-05-065 filed 2/15/01, effective 3/18/01)

SWCAA 476-030 Definitions

(1) "**Adequately wet**" means sufficiently mixed, saturated, penetrated, or coated with a fine mist of water or aqueous solution to prevent emissions.

(2) "**AHERA accredited building inspector**" means a person who has successfully completed the training requirements for a building inspector established by the Environmental Protection Agency (EPA) Asbestos Model Accreditation Plan; Interim Final Rule (40 CFR 763, Appendix C to Subpart E, I.B.3) and whose certification is current. (Asbestos Hazard Emergency Response Act-AHERA)

(3) "~~(AHERA)~~ **Asbestos project designer**" means a person who has successfully completed the training requirements for an abatement project designer established by EPA regulations (40 CFR 763-90(g) Subpart E, Appendix C) and whose certification is current.

(4) "**Asbestos**" means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentine), crocidolite (riebeckite), or anthophyllite.

(5) "**Asbestos-containing material**" means any material containing ~~((at least))~~ greater than one percent (1%) asbestos as determined by polarized light microscopy using ~~((the interim Method of the Determination of Asbestos in Bulk Samples contained in Appendix A of Subpart F in 40 CFR Part 763-))~~ the procedures and methods in 40 CFR Part 763 Subpart E, Appendix E, Section 1. This term does not include nonfriable asbestos-containing roofing materials, regardless of asbestos content, when the following conditions are met:

(a) The asbestos-containing roofing material is in good condition and is not peeling, cracking, or crumbling; and

(b) The binder is petroleum based, the asbestos fibers are suspended in that base, and individual fibers are still encapsulated; and

(c) The binder still exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing it; and

(d) The building, vessel, or structure containing the asbestos-containing roofing material, will not be demolished by burning or mechanical renovation/demolition methods that may release asbestos fibers.

(6) **"Asbestos-containing waste material"** means any waste that contains, or is contaminated with, asbestos-containing material. This term includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material(s) collected for disposal, or asbestos-containing waste, debris, containers, bags, protective clothing, or HEPA filters. This term does not include samples of asbestos containing material taken for testing or enforcement actions.

(7) **"Asbestos project"** means the construction, demolition, maintenance, repair, remodeling, or renovation of any public or private building(s), vessel, structure(s), or component(s) involving the demolition, removal, ~~((encapsulation,))~~ salvage, disposal, or disturbance of any asbestos-containing material or presumed asbestos containing material. ~~((This term includes the removal and disposal of asbestos-containing waste material from manufacturing operations that combine asbestos-containing material with any other material(s) to produce a product and the removal and disposal of stored asbestos-containing material.))~~ It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other ~~((non-asbestos))~~ non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released. Nor does this include routine maintenance and other non-abatement projects that may minimally disturb ~~((ACM))~~ asbestos-containing materials.

(8) **"Asbestos ((Survey)) inspection"** means an inspection by an AHERA accredited building inspector using the procedures contained in 40 CFR 763.85 and 86, or an alternate method that has received prior approval from the Agency, to determine whether materials or structures to be worked on, removed, remodeled, renovated or demolished, (including material on the outside of structures) contain asbestos.

(9) ~~(("Authority" or))~~ **"Agency"** means the Southwest Clean Air Agency (SWCAA).

(10) "Certified asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship, registered under chapter 18.27 RCW, that submits a bid, or contracts to remove asbestos for another and is certified by the Washington Department of Labor & Industries to remove asbestos.

~~((10))~~ (11) **"Certified asbestos worker/supervisor"** means a person who is certified by the Washington State Department of Labor and Industries under WAC 296-65-010; and 012, and 030 to undertake an asbestos project or, for federal employees working in a federal facility, trained in an equally effective program approved by the United States Environmental Protection Agency.

~~((H))~~ (12) **"Collected for disposal"** means sealed in a leak-tight container while adequately wet.

~~((12) "Competent Person" means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate them, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).))~~

(13) **"Component"** means any equipment, pipe, structural member, or other item covered with, coated with, or containing asbestos-containing material.

(14) **"Controlled area"** means an area ~~((to which))~~ with access restricted to allow only certified asbestos workers, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA)((, have access)). For owner-occupied, single-family residence dwellings, the controlled area is the ~~((interior of the dwelling))~~ area where the asbestos-containing material is being removed.

(15) **"Demolition"** means the wrecking, dismantling, removal of any load-supporting structural member on, or intentional burning of, any building, vessel, structure, or portion thereof; rendering the structure uninhabitable. Demolition includes the removal of a facility from its foundation followed by relocation of the facility onto a new foundation at a different location. ~~((For owner occupied, single family residence dwellings, a demolition means the wrecking, dismantling, or removal of any load bearing structural member by the use of heavy equipment (such as a backhoe) or the burning of the building thereby rendering as permanently uninhabitable, that portion of the building being demolished.))~~

(16) **"Emergency asbestos project"** ~~((or "Emergency Renovation Project"))~~ means an unplanned asbestos project necessitated by a sudden and unexpected event ~~((that will imminently endanger human health and safety either through exposure to asbestos fibers or of vital utilities.))~~ Such events may include earthquakes, water damage, fire damage, non-routine failure or malfunction of equipment, or identification of additional asbestos-containing material discovered during an asbestos project.

~~((17) "Encapsulant" means a compound that creates a membrane over a surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).))~~

~~((18) "Encapsulation" means the application of an encapsulant on surfaces that are covered, coated or manufactured from asbestos containing material to control the release of asbestos fibers into the air. For purposes of this regulation, encapsulation includes the construction of enclosures.))~~

~~((19) "Enclosure" means an airtight protective overlay, such as a ceiling, floor, or wall or a plastic wrapper or barrier, covering surfaces that are coated with, covered with, or containing asbestos-containing material to control the release of asbestos fibers into the air.))~~

(17) **"Facility"** means all or part of any institutional, commercial, public, industrial, agricultural or residential structure, and marine vessels. This term does not include rec-

reational vehicles such as campers, trailers, motorhomes or personal watercraft.

~~((20)) (18) "Friable asbestos-containing material"~~ means asbestos-containing material that, when dry, can be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. ~~((Such materials include, but are not limited to, thermal system insulation, surfacing material, and cement asbestos products.))~~

~~((21)) (19) "HEPA filter"~~ means a high efficiency particulate air filter found in respirators and vacuum systems capable of filtering 0.3 micrometer mean aerodynamic diameter particles with 99.7% efficiency or greater.

~~((22)) (20) "Leak tight container"~~ means a dust and liquid tight container ~~((, at least 6 mil thick))~~ that encloses the asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and polyethylene plastic used to wrap asbestos covered components.

~~((23) "Local Exhaust Ventilation and Collection System"~~ means a system as described in Appendix J of EPA 560/565-024, *Guidance for Controlling Asbestos-Containing Materials in Buildings.*)

(21) "Negative pressure enclosure" means any enclosure of an asbestos abatement project where the air pressure outside the enclosure is greater than the air pressure inside the enclosure and the air inside the enclosure is changed at least four times an hour by exhausting it through a HEPA filter.

~~((24)) (22) "Nonfriable asbestos-containing material"~~ means asbestos-containing material that, when dry, cannot be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal.

(23) "Notification period" means the 10 day period from the date that all required submittals and fees are received at SWCAA.

~~((25)) (24) "Owner" or "Operator"~~ means any person who owns, leases, operates, controls, or is responsible for activities at a project site, or a project operation, or both.

~~((26) "Owner-Occupied, Single Family Residence"~~ means any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is currently used or was once used, occupied, or designed to be occupied by one family who owns the property as their domicile. This term includes houses with a "mother-in-law apartment" or "guest room". This term does not include rental property or multiple family units, nor does this term include any mixed-use building, structure, or installation that contains a residential unit.)

(25) "Owner occupied residential dwelling" means any single family housing unit which is permanently or seasonally occupied by the owner of the unit both prior to and after renovation or demolition. This term includes houses, mobile homes, houseboats, houses with a 'mother-in-law apartment' or 'guest rooms, and associated structures located on the property.' This term does not include structures that are to be demolished or renovated as part of a commercial or public project; nor does this term include any mixed-use building, structure or installation that contains a residential

unit, or any building that is leased, used as a rental, or for commercial purposes.

~~((27)) (26) "Person"~~ means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

~~((28)) (27) "Presumed asbestos-containing material"~~ means ~~((thermal system insulation and surfacing material found in buildings constructed no later than 1980 (29 CFR 1926.1101))~~ any suspect asbestos containing material not evaluated or sampled by an AHERA accredited building inspector and is therefore presumed to be greater than 1% asbestos and shall be treated as such.

~~((29) "Project"~~ means an asbestos project, maintenance activity, renovation, or demolition activity.)

~~((30)) (28) "Renovation"~~ means the modification of any existing building, vessel, structure, component, or portion thereof, not including demolition. ~~((involving the removal, encapsulation, alteration, disposal, or disturbance of any asbestos-containing material, or a project that is releasing, or likely to release asbestos fibers into the air. A renovation project is only covered under this regulation if the renovation involves asbestos-containing material or the potential to disturb asbestos-containing material. If no asbestos-containing material is present on the project, there are no notification requirements or special handling procedures.))~~

(29) "Structure" means something built or constructed, in part or whole. Examples include, but are not limited to, the following in part or whole: houses, garages, commercial/industrial/municipal buildings, storage tanks and vessels, mobile homes, bridges, pole buildings, canopies and lean-tos. The term does not include normally mobile equipment including but not limited to automobiles, recreational vehicles and boats, wood decks and fences.

~~((31)) (30) "Suspect asbestos-containing material"~~ means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, mastics and cement siding regardless of year installed.

(31) "Temporary asbestos storage facility" means a controlled facility for the storage of asbestos-containing waste materials longer than 10 days after collection and prior to transfer to a permanent disposal site.

(32) "Visible emissions" means ~~((any))~~ emissions to the atmosphere that are visually detectable without the aid of instruments: including deposition and track out of asbestos containing material outside of the controlled area. This term does not include condensed uncombined water vapor.

(33) "Waste generator" means any owner or operator of a source whose act or process produces asbestos-containing waste material.

(34) "Waste shipment record" means the shipping document required to be originated and signed by the owner or operator, used to track and substantiate the disposition of asbestos-containing waste material.

(35) "Working Day" means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-065 filed 2/15/01, effective 3/18/01)

SWCAA 476-040 Asbestos ~~Survey~~ Project Requirements

(1) Renovation

~~((a) Prior to performing any renovation activity the property owner or the owner's agent shall determine whether there are suspect asbestos-containing materials in the work area. The property owner or the owner's agent shall obtain an asbestos survey of any suspect asbestos-containing materials. The asbestos survey shall be performed by an AHERA (Asbestos Hazard Emergency Response Act) building inspector. An asbestos survey at a single family residence is not required to be performed by an AHERA building inspector when the renovation project is performed by the owner/occupant.~~

~~((b) A summary of the results of the asbestos survey shall be documented and shall either be posted by the property owner or owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.~~

~~((c) Any material presumed to be asbestos-containing material is not required to be evaluated by an AHERA building inspector. Any material presumed to be asbestos-containing material shall be handled as though it was asbestos-containing material.~~

~~((d) Only an AHERA building inspector may determine that a suspect material does not contain asbestos except for renovations of an owner-occupied, single-family residence performed by the owner/occupant, however, must handle all presumed asbestos-containing material as provided in SWCAA 476-050.))~~

(a) Prior to performing any renovation activity the property owner or the owner's agent shall determine whether there are suspect asbestos-containing materials in the work area. If suspect asbestos containing material is present and may be disturbed during the project, the property owner or owner's agent must:

(i) Treat the suspect asbestos-containing material as presumed asbestos-containing material and handle it as asbestos containing material; or

(ii) Have an asbestos inspection conducted by an AHERA accredited building inspector to determine if asbestos is present. Suspect material shall be analyzed for asbestos content using the procedures in Title 40 Part 763 Subpart E, Appendix E, Section 1.

(iii) For renovations performed by the owner-occupant of a single family residence all suspect materials shall be handled as presumed asbestos-containing materials unless determined otherwise by analyzing for asbestos content using the procedures in 40 CFR Part 763 Subpart E, Appendix E, Section 1. An asbestos inspection is not required to be performed by an AHERA certified building inspector at a single family residence when the renovation project is performed by the owner/occupant.

(b) The results of any asbestos inspection required under this rule shall be documented and be posted by the property owner or owner's agent.

(2) Demolition

~~((a) Prior to performing any demolition project the property owner or the owner's agent shall obtain an asbestos ((survey)) inspection of the ((facility)) structure or part of the ((facility)) structure where the demolition will occur for the presence of asbestos. The asbestos ((survey)) inspection shall be performed by an AHERA ((Asbestos Hazard Emergency Response Act)) accredited building inspector.~~

~~((b) A summary of the results of the asbestos survey shall be documented and shall either be posted by the property owner or owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.))~~

(b) Samples of suspect asbestos-containing materials shall be collected by an AHERA accredited building inspector for analysis to determine the amount and type of asbestos present in the material.

~~((c) Any material presumed to be asbestos-containing material is not required to be ((evaluated)) sampled by an AHERA accredited building inspector. Any material presumed to be asbestos-containing material shall be handled as though it was an asbestos-containing material.~~

~~((d) Only an AHERA building inspector may determine that a suspect material does not contain asbestos-containing materials.))~~

(d) Only an AHERA accredited building inspector may determine, by performing an asbestos inspection, that a material is not a suspect asbestos-containing material.

(e) Suspect materials collected shall be analyzed for asbestos content using the procedures and methods in 40 CFR Part 763 Subpart E, Appendix E, Section 1.

(f) A summary of the results of the asbestos inspection shall be documented and shall either be posted by the property owner or owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

(g) Prior to demolition all identified or presumed asbestos-containing material must be removed as an asbestos project in accordance with SWCAA 476-080.

~~((e))~~ (h) Regardless of the amount of asbestos-containing material present (including none), a Notification of ((a)) Demolition ((activity)) must be submitted to the Agency on Agency approved forms and include a copy of the asbestos inspection report prior to commencing a demolition project in accordance with SWCAA 476-050(2). In no event shall a project or activity proceed on a date other than the date indicated on the notification.

~~((f))~~ (i) If the facility is to be demolished by intentional burning, all ((the)) asbestos-containing material shall be removed as an asbestos project in accordance with SWCAA 476-080.

(j) Underground Storage Tanks

An asbestos survey is not required prior to demolition of an underground storage tank. However, if suspect asbestos-containing material is identified during the demolition of an underground storage tank, work shall cease until it is determined whether or not the suspect asbestos-containing mate-

rial is asbestos-containing material by the procedures and methods in 40 CFR Part 763 Subpart E, Appendix E, Section 1.

(3) Asbestos Inspection Procedures

(a) The required number of bulk asbestos samples must be collected per the sampling procedures detailed in EPA regulation 40 CFR Part 763.86

(b) An AHERA accredited building inspector shall collect, in a statistically random manner, a minimum of three bulk samples from each homogeneous area of any surfacing material that is not presumed to be asbestos-containing material, and shall collect the samples as follows:

(i) At least three (3) bulk samples shall be collected from each homogeneous area that is 1,000 square feet or less.

(ii) At least five (5) bulk samples shall be collected from each homogeneous area that is greater than 1,000 square feet but less than or equal to 5,000 square feet.

(iii) At least seven (7) bulk samples shall be collected from each homogeneous area that is greater than 5,000 square feet.

(c) Except as provided for in 40 CFR 763.86 (b)(2)-(4), an AHERA accredited building inspector shall collect, in a statistically random manner, at least three (3) bulk samples from each homogeneous area of thermal system insulation that is not presumed to be asbestos-containing material.

(d) An AHERA accredited building inspector shall collect, at least three (3) bulk samples from each homogeneous area of any miscellaneous material that is not presumed to be asbestos-containing material.

(e) Except for wallboard, bulk samples shall not be composited for analysis.

(f) Bulk samples shall be analyzed for asbestos content by polarized light microscopy (PLM) using the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, or a more effective method as approved or required by EPA.

(4) Asbestos Inspection Report Requirements

Asbestos inspections shall contain, at a minimum, all of the following information:

(a) General Information.

(i) Date the inspection was performed;

(ii) AHERA accredited building inspector name and signature, certification number, date certification expires, and name and address of entity providing AHERA accredited building inspector certification;

(iii) Site address/location where the inspection was performed;

(iv) Description of the structure/area inspected (e.g., use, approximate age and approximate outside dimensions);

(v) The purpose of the inspection (e.g., pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage), if known;

(vi) Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area);

(vii) Identify and describe all homogeneous areas of suspect asbestos-containing materials, except where limitations of the asbestos survey identified prevented such identification and include whether each homogeneous material is surfacing material, thermal system insulation, or miscellaneous material;

(viii) Identify materials presumed to be asbestos-containing material;

(ix) Exact location where each bulk asbestos sample was taken (e.g., schematic or other detailed description sufficient for any person to match the material(s) sampled and tested to the material(s) on site);

(x) Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:

(A) Laboratory name, and address

(B) Bulk sample numbers;

(C) Bulk sample descriptions;

(D) Bulk sample results showing asbestos content; and

(E) Name of the person at the laboratory that performed the analysis.

(b) Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

(i) Describe the color of each asbestos-containing material;

(ii) Identify the location of each asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project (e.g. using schematics, detailed description, or both);

(iii) Provide the approximate quantity of each asbestos-containing material in square feet or linear feet and;

(iv) Describe the condition of each asbestos-containing material (good or damaged). If the asbestos-containing material is damaged, describe the general extent and type of damage (e.g., flaking, blistering, crumbling, water damage, or fire damage).

(5) Asbestos Inspection Posting.

Except as provided for in SWCAA 476-040(7), a complete copy of an asbestos inspection report must be posted by the property owner or the owner's agent in a readily accessible and visible area at all times for inspection by SWCAA and all persons at the work site. This applies even when the asbestos inspection performed by an AHERA accredited building inspector states there are no asbestos-containing materials in the work area. During demolition, if it is not practical to post the asbestos inspection report, it must be readily accessible and made readily available for inspection by SWCAA and all persons at the demolition site.

(6) Asbestos Survey Retention.

The property owner or owner's agent, and the AHERA accredited building inspector that performed the asbestos inspection (when the asbestos inspection has been performed by an AHERA accredited building inspector), shall retain a complete copy of the asbestos inspection for at least 24 months from the date the inspection was performed and provide a copy to the Agency upon request.

(7) Exceptions.

An asbestos inspection is not required for renovation of an owner-occupied, single-family residence performed by the owner-occupant. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

(8) Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.

It is not required that an AHERA accredited building inspector sample any material presumed to be asbestos-containing material. If material is presumed to be asbestos-containing material, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. The determination shall include a description, approximate quantity, and location of presumed asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project. The property owner, owner's agent, and the person that determined that material would be presumed to be asbestos-containing material, shall retain a complete copy of the written determination for at least 24 months from the date it was made and shall provide a copy to the Agency upon request.

(9) Alternate Asbestos Inspection

A written alternate asbestos inspection method shall be prepared and used on occasions when conventional sampling methods required in EPA regulation 40 CFR 763.86 cannot be exclusively performed. All other asbestos inspection requirements of this regulation apply. For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof (e.g. when materials are not intact or homogeneous areas are not identifiable). Conventional sampling methods shall not be used for rubble or debris piles, and ash or soil unless approved otherwise in writing by the Agency. If conventional sampling methods cannot exclusively be used and material is not presumed to be asbestos-containing material, alternate asbestos inspection methodology must be used alone or, when possible, in combination with conventional inspection methodology. An alternate asbestos inspection methodology typically includes random sampling according to a grid pattern (e.g. random composite bulk samples at incremental 1' depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, *Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies*, EPA/600/R-92/128, July 1992.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 17-11-084 filed 5/19/17, effective 6/19/17)

SWCAA 476-050 Notification Requirements and Fees

(1) **Applicability.** No person shall cause or allow work on an asbestos project ~~(, maintenance, renovation,)~~ or demolition activity ~~((involving asbestos-containing material))~~ unless the owner or owner's agent ((operator)) has submitted a complete notification to the Agency on Agency approved forms, in accordance with the advance notification period requirements and fees as provided in ~~((SWCAA 476-050(2)))~~ the current SWCAA Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(a) ~~((An Asbestos Notification))~~ A Notice of Intent to Remove Asbestos is ((not)) required for ((any)) all asbestos projects. ((involving less than 10 linear feet or 48 square feet

~~(per structure, per year) of any asbestos-containing material unless the facility is to be demolished by intentional burning. If the facility is to be demolished by intentional burning, all asbestos-containing material shall be removed as an asbestos project. An Asbestos Notification))~~ A Notice of Intent to Remove Asbestos is not required for removal of nonfriable roofing material. The owner/operator shall maintain documentation to substantiate qualification for the exemption;

~~(b) ((Regardless of the amount of asbestos-containing material present (including none,))~~ A Notification of Demolition ((activity)) must be submitted to the Agency on Agency approved forms prior to commencing ~~((a))~~ any demolition activity. ((accordance with SWCAA 476-050(2). In no event shall a project or activity proceed on a date other than the date indicated on the notification;))

(c) The approval date to perform a project will be the date that all required submittals and fees are received at SWCAA;

(i) For asbestos and demolition projects that are subject to Title 40 Code of Federal Regulations, Part 61, Subpart M, the notification period shall be 10 working days following submittal of a complete notification.

(ii) For asbestos and demolition projects that are not subject to Title 40 Code of Federal Regulations, Part 61, Subpart M, the notification period shall be 10 days following submittal of a complete notification.

(iii) The asbestos or demolition project may commence on the day following the notification period. Asbestos projects performed by the owner-occupant are not subject to this requirement but must provide prior notification.

(d) In no event shall a project or activity proceed on a date other than the date indicated on the notification;

~~((d))~~ (e) The duration of the asbestos project, maintenance activity, renovation, or demolition activity or project shall not exceed one (1) year beyond the original project starting date. ((The project starting and completion date for an asbestos project shall be commensurate with the amount of asbestos-containing material involved. In no event shall a project or activity start or end on a date other than the date contained on the notification;))

~~((e))~~ (f) The ((written)) notification shall expire on the project completion date as specified by the owner or owner's agent ((operator;)) unless amended prior to the completion date.

~~((f))~~ (g) A copy of the ((written)) notification, all amendments and the asbestos ((survey)) inspection report shall be available for inspection at the project site at all times until completion of the project;

~~((g))~~ (h) For an asbestos project ((, maintenance, renovation)) or demolition activity that will begin or end on a date ((later)) other than the date(s) contained in the original notification, the ((owner/operator)) owner or the owner's agent shall notify SWCAA in writing ((by telephone (360-574-3058)) as soon as possible before the original start or end date ~~((and provide written notification (facsimile acceptable) to SWCAA of the new start date no later than the original start date.))~~ In no event shall a project or activity begin or end on a date other than the date indicated in the revised notification;

~~((h) For an asbestos project, maintenance, renovation or demolition activity that will begin on a date earlier than the one contained in the original notification, the owner/operator or owner's agent shall provide written notification (facsimile acceptable) to SWCAA of the new start date at least 10 working days before commencement of the project or activity. In no event shall a project or activity begin on a date other than the date indicated in the revised notification; and~~

~~(i) All asbestos projects, maintenance, renovation or demolition activities shall be completed on the date identified on the notification. When a project or activity will be completed prior to the date specified on the notification, the owner or operator shall notify SWCAA by telephone as soon as possible but in no event later than the actual completion date. The owner or operator shall provide SWCAA with written notification (facsimile acceptable) of actual completion within 5 calendar days if the completion date is before the date on the notification. If the actual completion date will be after the date indicated on the notification, the owner or operator shall submit an amendment to the written notification with the new completion date (facsimile acceptable) to SWCAA prior to the completion date on the original or amended previous notification.)~~

(2) **Advance Notification Period and Fee.** Any notification required by SWCAA 476-050(1) shall be considered incomplete until all the information required by SWCAA 476-050(1) is received by the Agency and accompanied by the appropriate fee. ~~((A facsimile of the completed notification form shall be acceptable documentation for the start of the notification period, but the appropriate fee shall be received before the project can proceed.))~~ The advance notification period and appropriate fee shall be determined as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(3) **Annual notification.** In lieu of the notification requirements of SWCAA 476-050(1) ~~((and 476-050(2),))~~ the owner or operator of a facility may submit to the Agency, on the Agency's form, an annual ~~((written))~~ notification to conduct asbestos ~~((projects (not including demolition or renovation)))~~ removal projects on one or more buildings, vessels, or structures at the facility during each calendar year for the purpose of scheduled maintenance or emergency repairs for removal of small quantities of asbestos-containing material as identified below. The requirements of SWCAA 476-050(1) shall not apply to asbestos projects undertaken during the calendar year at the applicable facility if all of the following conditions are met:

(a) Annual ~~((written))~~ notifications shall be submitted to the Agency for approval before commencing work on any asbestos projects specified in an annual ~~((application))~~ notification.

(b) The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section shall be limited to less than 260 linear feet on pipes and 160 square feet on other components.

(c) Any asbestos project involving at least 260 linear feet on pipes or 160 square feet or more on other components for each building, vessel, or structure at the facility shall be subject to the notification requirements of SWCAA 476-050(1)

and 476-050(2) ~~((in addition to))~~ and not the annual notification requirements.

(d) A copy of the annual notice shall be available for inspection at the property owner's or operator's office until the end of the calendar year.

(e) Asbestos-containing waste material generated from asbestos projects filed under an annual notification may be stored for disposal at the facility if all of the following conditions are met:

(i) All asbestos-containing waste material shall be treated in accordance with SWCAA 476-070(1); ~~((and))~~

(ii) Accumulated asbestos-containing waste materials collected ~~((during each calendar quarter))~~ from each asbestos project shall be kept in a controlled storage area posted with one (1) or more highly visible asbestos warning signs and accessible only to authorized persons; and

(iii) For storage of asbestos-containing waste material longer than 10 days, the owner/operator or owner's agent shall apply to SWCAA for a Temporary Asbestos Storage Facility Authorization unless the asbestos-containing waste material is handled as dangerous waste in accordance with WAC 173-303. Asbestos-containing waste material shall only be disposed of at sites operated in accordance with the provisions of 40 CFR 61.154 or 61.155 and approved by the health department with jurisdiction.

(f) Annual ~~((written))~~ notifications shall be submitted by the facility owner or operator on forms provided by the Agency. Notifications shall be submitted to the Agency at least 10 days in advance of the start date and shall be accompanied by ~~((an))~~ the annual fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(g) The facility owner or operator shall submit quarterly ~~((written))~~ reports to the Agency within fifteen (15) days after the end of each calendar quarter. Each quarterly report shall be submitted on forms provided by the Agency or an alternate format approved by the Agency.

(4) **Amendments.** An amended notification shall be submitted to the Agency prior to deviating from any of the information contained in a notification as detailed below. Amended notifications addressed by this section shall be filed by the original applicant, received by the Agency no later than the ~~((last filed completion))~~ asbestos project date, and are limited to the following revisions:

(a) A change in the job size category because of identification of additional asbestos-containing material. In this case, the fee shall be increased accordingly and the total fee shall be equal to, but not exceed, the fee amount provided for the new job size category as specified in ~~((SWCAA 476-050(2)))~~ the current Consolidated Fee Schedule established in accordance with SWCAA 400-098;

(b) The project starting or completion date, provided the total duration of the work does not exceed one (1) calendar year beyond the original starting date. The commencement date of the original advance notification period shall apply with no additional waiting period required for amended notifications. If an amended notification results in a job size category that requires a waiting period ~~((as specified in SWCAA 476-050(2)))~~ and the original notification did not require a

waiting period, the advance notification period shall commence on the date the original application was submitted;

(c) Name, mailing address, and telephone number of the owner or operator of the asbestos project site or operation;

(d) Waste disposal site, provided the revised waste disposal site is operated in accordance with the provisions of 40 CFR 61.154 or 61.155 and approved by the health department with jurisdiction;

(e) Method of removal or compliance procedures, provided the revised work plan meets the asbestos emission control and disposal requirements of SWCAA 476-060 and 450-070;

(f) Description, size (total square feet or number of floors), and approximate age of the building, vessel, or structure at the original address or location; and

(g) ~~((Any other information requested by the Agency.))~~
An amendment fee shall be incurred after the second revision to the original notification and for every subsequent revision thereafter in accordance with the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(5) Emergencies.

(a) The Agency may waive the required ~~((ten (10) working day))~~ advance notification period if the property owner or ~~((occupant))~~ owner's agent demonstrates in writing to the Agency that an asbestos project ~~((or maintenance, renovation))~~ or demolition ~~((activity))~~ must be conducted immediately because of any of the following:

(i) There was a sudden, unexpected event that resulted in a public health or safety hazard; or

(ii) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage; or

(iii) Asbestos-containing materials were encountered that were not identified during the asbestos inspection; or

~~((iii))~~ (iv) The project must proceed to avoid imposing an unreasonable financial burden.

(b) Each emergency waiver request shall include a fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(c) If the emergency asbestos project occurs during non business hours, notification to SWCAA must occur no later than the next business day.

(6) Abandoned Asbestos-Containing Material.

The Agency may waive part or all of the notification waiting period and project fee, by written authorization, for removal and disposal of abandoned (without the knowledge or consent of the property owner) asbestos-containing materials and for demolition of abandoned structures. All other requirements remain in effect.

(7) State of Emergency.

If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, the Agency may temporarily waive part or all of the project fee(s) and notification period by written authorization. The written authorization shall reference the applicable state of emergency, what fee(s) will be waived, to what extent the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-065 filed 2/15/01, effective 3/18/01)

SWCAA 476-060 Procedures for Asbestos ~~((Emission Control))~~ Projects

(1) **Project requirements.** No person shall cause or allow work on an asbestos project unless the following ~~((procedures are employed))~~ are met, except as provided in SWCAA 476-060(2):

(a) Any work on an asbestos project shall be performed by a certified asbestos abatement contractor with certified asbestos workers under the direct, on-site supervision of a certified asbestos supervisor. This requirement shall not apply to ~~((certain limited))~~ asbestos projects conducted in accordance with SWCAA 400-060(2) for owner-occupied, single-family dwellings performed by the owner/occupant.

(b) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only. This includes asbestos projects performed by the owner-occupant at owner-occupied, single family dwellings.

(c) All asbestos containing material shall be kept adequately wet while being removed from any structure, building, vessel, or component.

(d) No visible emissions, including fallout or track out, shall result from an asbestos project.

(e) All asbestos-containing material that has been removed or may have fallen off components during the course of an asbestos project shall be:

(i) Kept adequately wet until collected for disposal;

(ii) Collected for disposal at the end of each working day;

(iii) Contained in a controlled area at all times until transported to a temporary asbestos storage site or waste disposal site; ~~((and))~~

(iv) Placed into a leak-tight container before removal from containment area;

~~((iv))~~ (v) Carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise handled in such a manner that may risk further damage to them; or

~~((v))~~ (vi) Transported to the ground via dust tight chutes or containers if they have been removed or stripped more than 50 feet above ground level and were not removed as a unit or in sections.

(f) Mechanical assemblies or components covered with, coated with, or containing asbestos-containing material, removed as a unit or in sections, shall be contained in a leak-tight wrapping after wetting and shall be labeled in accordance with SWCAA 476-070 (1)(a)(iii).

(i) For large components such as boilers, steam generators, and large tanks, the asbestos-containing material is not required to be removed or stripped if the component can be removed, stored, transported, and deposited at a waste disposal site or reused without disturbing or damaging the asbestos.

(ii) Metal components such as valves, fire doors, and reactor vessels that have internal asbestos-containing material (~~(may avoid)~~) do not require wetting and leak tight wrapping if:

(A) All access to the asbestos-containing material is welded shut; or

(B) The component has mechanical seals in place that separate the asbestos-containing material from the environment and these seals cannot be removed by hand.

~~((C) The components are labeled in accordance with SWCAA 476-070 (1)(a)(iii).))~~

~~((F))~~ (g) Local exhaust ventilation and collection systems used on an asbestos project shall:

(i) Be maintained to ensure the integrity of the system; and

(ii) When feasible, have one or more transparent plastic or glass viewing ports installed on the walls of the enclosure in such a manner that will allow for viewing ~~((of all components))~~ inside the enclosure. When available, existing windows may be utilized for viewing ports.

~~((g))~~ (h) Local exhaust ventilation and collection systems, control devices, and vacuum systems, used on an asbestos project shall be equipped with a HEPA exhaust filter, maintained in good working order, and shall allow no visible emissions.

(2) Exemptions for Owner-Occupied, Single-Family ~~((Dwellings))~~ Residence. The requirements of SWCAA 476-060 (1)(a) shall not apply to asbestos projects conducted in an owner-occupied, single-family ~~((dwelling))~~ residence by the resident owner of the ~~((dwelling))~~ residence.

(3) Alternate Means of Compliance.

(a) Friable Asbestos-Containing Material Alternative Removal Methods

An alternate asbestos removal method may be employed for friable asbestos-containing material if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type of asbestos-containing material, the projected work practices, and the engineering controls, and demonstrates to the Agency that the planned control method will be effective as the work practices contained in SWCAA 476-060(1) in controlling asbestos emissions. The property owner or the owner's agent shall document through air monitoring at the exhaust from the controlled area that the asbestos fiber concentrations outside the controlled area do not exceed 0.01 fibers/cc, 8 hour average.

The Agency may require additional conditions be included in the alternate removal method that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the alternate removal method for cause.

(b) Nonfriable Asbestos-Containing Material Alternative Removal Methods

An alternate asbestos removal method may be employed for nonfriable asbestos-containing material if ~~((a Competent Person or))~~ an AHERA Project Designer has evaluated the work area, the type of asbestos-containing material, the projected work practices, and the engineering controls, and demonstrates to the Agency that the planned control method

will be equally as effective as the work practices in SWCAA 476-060(1) in controlling asbestos emissions.

The Agency may require additional conditions be included in the alternate removal method that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the alternative removal method for cause.

(c) Leaving Nonfriable Asbestos-Containing Material in Place During Demolition

Nonfriable asbestos-containing material may be left in place during demolition, if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type of asbestos-containing materials involved, the projected work practices, and the engineering controls, and demonstrates to the Agency that the asbestos-containing material will remain nonfriable during all demolition activities and subsequent disposal of the debris. No asbestos-containing material shall remain in place if the demolition involves burning or other activities that would result in the potential release of asbestos-containing material to the ambient air.

The Agency may require additional conditions be included in the alternate removal method that are reasonably necessary to assure the asbestos-containing material remains nonfriable ~~((, and may revoke the Alternate Approval Notification for cause)).~~

(4) Exceptions for Hazardous Conditions. Asbestos-containing material need not be removed prior to a demolition if the property owner or owner's agent demonstrates to the Agency that it is not accessible because of hazardous conditions such as: structures or buildings that are structurally unsound and may immediately collapse, or other conditions that are dangerous to life and health. The property owner must submit the written determination of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures as prepared by an AHERA project designer that will be followed for controlling asbestos emissions, including run off, during the demolition ~~or renovation~~ and disposal of the asbestos-containing waste material.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-065 filed 2/15/01, effective 3/18/01)

SWCAA 476-070 Disposal of Asbestos-Containing Waste Material

(1) Disposal Requirements. No person shall cause or allow work on an asbestos project unless the following procedures are employed during the collection, processing, packaging, ~~((transporting,))~~ ~~((deposition))~~ disposal of any asbestos-containing waste material:

(a) Treat all asbestos-containing waste material as follows:

(i) Adequately wet all asbestos-containing waste material ~~((and mix asbestos waste from control devices, vacuum systems, or local exhaust ventilation and collection systems with water to form a slurry));~~

(ii) After wetting, seal all asbestos-containing waste material in leak tight containers or wrapping to ensure that they remain adequately wet when deposited at a waste disposal site;

(iii) Permanently (indelible markers or labels made with indelible ink) label wrapped materials and each container with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the Occupational Safety and Health Administration. Permanently mark the label with the date the material was collected for disposal, the name of the waste generator, the name and affiliation of the certified asbestos supervisor, (unless performed by owner-occupant at residential structure), and the location at which the waste was generated prior to removal from the controlled area;

(iv) Ensure that the exterior of each container is free of all asbestos residue; ~~and~~

(v) Exhibit no visible emissions during any of the operations required by this section; ~~and~~

(vi) Asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of, at a waste disposal site approved to accept asbestos-containing waste material.

(b) All asbestos-containing waste material shall be deposited within ~~((ten (10) calendar))~~ 10 days after collection at a waste disposal site operated in accordance with the provisions of 40 CFR 61.154 or 61.155 and approved by the health department with jurisdiction. Asbestos-containing waste material may remain onsite longer than 10 days if the facility has a current Temporary Asbestos Storage Facility Authorization and the asbestos-containing waste material is stored within that temporary storage facility as provided in SWCAA 476-070~~((2))~~ (3).

(c) All asbestos-containing waste material, handled as dangerous waste in accordance with WAC 173-303, shall be excluded from the requirements of SWCAA 476-070 (1)(a)(iii) and 476-070 (1)(b).

(2) Waste Tracking Requirements.

No person shall cause or allow the disposal of asbestos-containing waste material unless all of the following requirements are met:

(a) Maintain waste shipment records, beginning prior to transport, using a separate form for each waste generator that includes all of the following information:

(i) The name, address, and telephone number of the waste generator

(ii) The approximate quantity in cubic meters or cubic yards.

(iii) The name and telephone number of the disposal site operator.

(iv) The name and physical site location of the disposal site.

(v) The date transported.

(vi) The name, address, and telephone number of the transporter.

(vii) A certification from the waste generator that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable waste transport regulations.

(b) Provide a copy of the waste shipment record to the transfer station/disposal site owner or operator at the same time the asbestos-containing waste material is delivered. If requested by the disposal site operator, a copy of the Alternate Work Plan or written determination as specified pursuant to SWCAA 476-060(3) shall also be provided to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered.

(c) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, the waste generator shall contact the transporter or the owner or operator of the disposal site to determine the status of the waste shipment.

(d) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 calendar days of the date the waste was accepted by the initial transporter, report in writing to the Southwest Clean Air Agency. Include in the report, a copy of the waste shipment record and cover letter signed by the waste generator, explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(e) Retain a copy of all waste shipment records for 24 months from the date it was generated, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of waste shipment records shall be provided to the Agency upon request.

~~((2))~~ **(3) Alternative Storage Method - Temporary Asbestos Storage Facility.** The owner or operator of a licensed asbestos abatement company or disposal facility may apply to the Agency to establish a temporary facility for the purpose of collecting and temporarily storing asbestos-containing waste material.

(a) No person shall cause or allow the operation of a temporary asbestos storage facility without the prior written approval of the Agency.

(b) The owner or operator must submit a complete application for establishment of a temporary asbestos storage facility on forms provided by the Agency. When approved, an Asbestos Storage Facility Authorization will be returned to the owner or operator by SWCAA to be posted at the entrance to the facility or on file at the facility office.

(c) ~~((A))~~ A temporary asbestos storage facility shall meet the following general conditions:

(i) Asbestos-containing waste material must be stored in a leak tight container ((with a single piece liner at least 6 mil in thickness; and)) in a secured building or in a secured exterior enclosure; and

~~((ii) Said container must be in a secured building or in a secured exterior enclosure; and))~~

~~((iii))~~ (ii) The secured building or enclosure must be locked except during transfer of asbestos-containing waste material((; and)).

~~((iv))~~ Return of the waste shipment record to the waste generator shall not exceed the 45-day requirement of 40 CFR Part 61.150 except as otherwise approved by the Agency.)

~~((3))~~ **(4) Alternative Disposal Method - Asbestos-Cement Water Pipe.** Asbestos-cement ~~((water))~~ pipe used on public right-of-ways or public easements shall be excluded from the disposal requirements of SWCAA 476-070 (1)(b) if the following ~~((conditions are))~~ condition is met:

(a) ~~((Any asbestos-cement water pipe greater than one (1) linear foot in size may be buried on public right-of-ways or public easements if covered with at least three (3) feet or more of non-asbestos fill material; and))~~ The asbestos-cement pipe is maintained intact, not crushed or broken, and is left in place under at least 3 feet of backfill and the location noted on deeds, easements and other applicable property and legal documents. Prior written approval from the Agency is required.

If the asbestos-cement pipe has been crushed or broken and left in place, the location shall be subject to the active waste disposal site requirements of 40 CFR 61.154.

~~((b))~~ All asbestos-containing waste material, including asbestos-cement water pipe fragments that are one (1) linear foot or less, protective clothing, HEPA filters, or other asbestos-contaminated material, debris, or containers, shall be subject to the requirements of SWCAA 476-010 through 476-070.)

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-065 filed 2/15/01, effective 3/18/01)

SWCAA 476-080 Demolition by Intentional Burning

Prior to performing any fire training exercise involving intentional burning as a method of demolition, the following steps shall be completed:

(1) The owner or owner's agent shall obtain an asbestos ~~((survey))~~ inspection of any suspect asbestos-containing materials (including non-friable roofing materials). The asbestos ~~((survey))~~ inspection shall be performed by an AHERA accredited building inspector as provided in SWCAA 476-040.

(2) If asbestos-containing material is present, regardless of amount, the asbestos-containing material shall be removed as an asbestos project in accordance with SWCAA 476-050 and SWCAA 476-060.

(3) If there is no asbestos-containing material in the work area, this determination shall either be posted at the work area or communicated in writing to all persons involved in the demolition project by the owner or owner's agent.

(4) A summary of the results of the asbestos ~~((survey))~~ inspection shall be submitted to SWCAA by the owner or owner's agent along with the ~~((Demolition Notification))~~ Notification of Demolition as provided in SWCAA 476-050.

(5) The fire district or other organization involved in the fire training exercise as a method of demolition shall notify SWCAA of the date, time, and location of the proposed exercise and the fire district contact person and phone number for

that exercise at least ~~((five calendar))~~ 10 days in advance of the exercise.

(6) The owner or owner's agent shall provide notice of the fire to the owners of property adjoining the property on which the fire will occur at least ~~((five calendar))~~ 10 days in advance of the exercise.

(7) No fire training exercise that involves intentional burning as a method of demolition shall be allowed without prior written approval from SWCAA as described in SWCAA 425-060.

WSR 18-07-007

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed March 9, 2018, 7:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-118.

Title of Rule and Other Identifying Information: WAC 308-104-014 Application for driver's license or identicaid.

Hearing Location(s): On April 24, 2018, at 9:00 a.m., at the City of Olympia, Parks, Arts and Recreation, Room 200, 222 Columbia Street N.W., Olympia, WA 98501.

Date of Intended Adoption: April 25, 2018.

Submit Written Comments to: Stephanie Sams, Policy and Legislative Analyst, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, email ssams@dol.wa.gov, by April 23, 2018.

Assistance for Persons with Disabilities: Contact Stephanie Sams, policy and legislative analyst, phone 360-902-0131, fax 360-664-0116, email ssams@dol.wa.gov, by April 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department's current regulations require an applicant for a driver's license to provide the applicant's place of birth. A person's place of birth is not necessary for ascertaining a person's identity and should be removed.

Reasons Supporting Proposal: The amendment will update the department's policy and procedures for processing applications for driver licenses, identification cards and instruction permits. The amendment will end the department's collection of an applicant's place of birth, because there is a risk that collection of information that does not prove identity and establishes a Washington resident's national origin could be lawfully obtained by federal law enforcement agencies for federal immigration enforcement purposes, or otherwise could be used to discriminate against a person based on national origin. *See* Governor's Exec. Order, 17-01.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.119.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Sams, Highway[s]-Licenses Building, Olympia, Washington, 360-902-0131; Implementation and Enforcement: Greg Mukai, Highway[s]-Licenses Building, Olympia, Washington, 360-902-3851.

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 amendment adds no additional cost to the stakeholders.

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.

March 9, 2018
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-23-184, filed 11/22/17, effective 12/23/17)

WAC 308-104-014 Application for driver's license or identicard. A person applying for a driver's license, instruction permit, or identification card must provide the following information:

- (1)(a) The person's full name, current mailing and Washington residential address, and telephone number;
- (b) A person applying for an identicard who does not have a permanent primary resident address may be issued an identicard at the cost of production if the person:
 - (i) Is under the age of eighteen;
 - (ii) Applies in person;
 - (iii) Attests to a lack of permanent primary resident address at each application; and
 - (iv) Provides a temporary mailing address where the identicard can be mailed.
- (2) The person's physical description, including sex, height, weight, and eye color;
- (3) The person's date (~~and place~~) of birth;
- (4)(a) The person's Social Security number, if the Social Security number is required by state or federal law. If the person's Social Security number is not required by state or federal law, the person may voluntarily provide his or her Social Security number in order to assist the department in verifying identity;
- (b) If the Social Security number is required by state or federal law and the person has not been issued a Social Security number, the person must submit a sworn affidavit, under penalty of perjury, stating that he or she does not have a Social Security number. The department may require that a person who is applying for a license and who has signed an affidavit under this subsection provide additional documentation satisfactory to the department establishing the person's Washington residence address;
- (5) The person's mother's maiden name and whether the person is one of multiple siblings born at the same time;

(6) If the application is for a driver's license or instruction permit, whether the person has been previously licensed, where such license was issued, and under what name;

(7) If the application is for a driver's license or instruction permit, whether the person has ever had his or her driver's license or driving privilege suspended, revoked, canceled, disqualified, withheld, or denied, and if so, where and when such driving sanction was imposed and the reason for such action;

(8) If the application is for a driver's license or instruction permit, whether the person has had a mental or physical condition or is taking any medication which could impair his or her ability to operate a motor vehicle;

(9) If the application is for a driver's license and the person is under the age of eighteen, a declaration by the person's parent, guardian, or employer that he or she has read and understands the intermediate license restrictions, and a declaration by the person that he or she has read and understands the intermediate license restrictions;

(10) The person's signature and, if the application is for a driver's license or instruction permit and the person is under the age of eighteen, the signature of the person's custodial parent or legal guardian; and

(11) Any supplementary documentation as may be necessary to verify any of the information required by this section.

WSR 18-07-008
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed March 9, 2018, 7:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-086.

Title of Rule and Other Identifying Information: Chapter 308-101 WAC, Hearing procedural rules; adds or amends sections to chapter 308-102 WAC; amends WAC 308-104-025; and repeals WAC 308-102-130, chapter 308-103 WAC, WAC 308-104-035, and 308-104-350.

Hearing Location(s): On April 26, 2018, at 10:30 a.m., at the Highway[s]-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507. Check in at the first floor counter.

Date of Intended Adoption: April 27, 2018.

Submit Written Comments to: Terri Gailfus, 421 Black Lake Boulevard S.W., Black Lake 1, Floor 1, email Tgailfus@dol.wa.gov, by April 25, 2018.

Assistance for Persons with Disabilities: Contact Terri Gailfus, phone 360-664-1418, email Tgailfus@dol.wa.gov, by April 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align hearing procedural rules with recent legislation, standardize the procedural rules across all types of hearings, and codify long-standing informal procedures and policies.

Reasons Supporting Proposal: Current procedural rules address sixty day time frame for holding a hearing which will be reduced to thirty days on January 1, 2019. Per the Admin-

istrative Procedure Act, updated rules will meet department of licensing's (DOL) obligations to codify longstanding informal rules of procedure.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: Not applicable.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting: Tony Pasinetti, 320 North 85th Street, Seattle, WA 98103, 206-297-4537; Implementation and Enforcement: Terri Gailfus, 421 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1418.

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 changes add no additional costs to the stakeholders.

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 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.

March 9, 2018

Damon Monroe

Rules Coordinator

Chapter 308-101 WAC

HEARING PROCEDURAL RULES

NEW SECTION

WAC 308-101-010 Applicability. (1) This chapter applies to all adjudicative proceedings under the jurisdiction of the department of licensing or the director of the department of licensing with respect to the following types of cases:

- (a) The implied consent law (RCW 46.20.308);
- (b) The habitual traffic offender law (chapter 46.65 RCW);
- (c) The Uniform Commercial Driver's License Act (chapter 46.25 RCW);
- (d) Any formal hearing affecting the driving privilege conducted pursuant to the provisions of RCW 46.20.329 through 46.20.333.

(2) Unless otherwise specified, this chapter does not apply to administrative interviews conducted under RCW 46.20.323 through 46.20.327.

NEW SECTION

WAC 308-101-020 Hearings examiners. All adjudicative proceedings under this chapter shall be conducted by a department hearings examiner, who is appointed a referee or presiding officer for such purposes. The director may also appoint additional referees or presiding officers from the employees of the department to conduct hearings. The director retains the discretion to revoke or limit an appointment at any time.

NEW SECTION

WAC 308-101-030 Computation of time. (1) In computing any period of time prescribed or allowed by any applicable statute or rule, RCW 1.12.040 shall apply;

(2) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation;

(3) Whenever a person has the right to request a hearing or other proceeding within a prescribed period after "notice is given" by the department under Title 46 RCW or 308 WAC, such notice is deemed to be given on the third day after the notice is deposited into the state mailing service;

(4) Whenever a person has the right to request a hearing or other proceeding within a prescribed period after "receiving notice" from the department under Title 46 RCW or 308 WAC, such notice is deemed to be "received" by a person on the third day after the notice is deposited into the state mailing service.

(5) A request for a hearing or interview under Title 46 RCW is deemed complete on the day the request is post-marked or, if sent electronically, the date the request is received by the department.

NEW SECTION

WAC 308-101-040 Eligibility for hearing. (1) A person is eligible for a hearing whenever the department proposes an adverse action against the driving privilege and the opportunity for a hearing or an interview is required by law. A person is also eligible for a hearing in the following circumstances:

(2) **HTO stay hearings:** A habitual traffic offender is eligible for a stay hearing under RCW 46.65.060 so long as the following conditions have been met:

(a) There is an alcohol/drug assessment on file completed after the last drug or alcohol related offense on the driving record;

(b) The person is not revoked for a violation of a stay or probation previously granted under RCW 46.65.060 or 46.65.080;

(c) If a stay has previously been denied after a hearing, there is evidence of alcoholism or drug addiction (substance dependence) with new treatment information.

(3) **HTO reinstatement hearings:** A habitual traffic offender is eligible for a reinstatement hearing if all of the following conditions have been met:

(a) At least four years have elapsed since the beginning of the habitual traffic offender revocation or if a habitual traf-

fic offender stay has been violated, at least four years have elapsed since the date of the new revocation notice;

(b) The person submits a declaration stating that he or she has not driven within two years prior to the request for a hearing. A record of any traffic infraction or conviction is conclusive evidence that a person drove within the past two years;

(c) Any period of additional revocation imposed following a habitual traffic offender reinstatement probation violation must be completed;

(d) If there has been a previous denial of a petition for reinstatement by a hearings examiner, at least one year has elapsed since the denial unless a shorter time is ordered by the hearings examiner.

(4) **HTO reinstatement without a hearing:** The department may grant a habitual traffic offender a reinstatement without a hearing if the person is eligible for a hearing under subsection (4) of this section and at the time of the request for a hearing:

(a) There are no other suspensions or revocations in effect;

(b) There are no vehicular homicide or vehicular assault convictions on the driver's record; and

(c) There is no more than one alcohol or drug-related incident on the driver's record. An alcohol or drug-related incident shall include an alcohol-related offense as defined in RCW 46.01.260, or an incident for which a sworn report was received under RCW 46.20.308 or 46.25.120, or similar incidents involving drugs and alcohol (including minor in possession laws), so long as the same incident is not counted more than once.

NEW SECTION

WAC 308-101-060 Service on petitioner. Service on the petitioner: Except as provided in WAC 308-101-080(10), the hearings and interviews unit provides all final orders and correspondence to the petitioner at the petitioner's address of record, unless the petitioner is represented, in which case service on the legal representative is deemed service on the petitioner. Documents may be provided to a petitioner via electronic distribution only, with the petitioner's agreement.

NEW SECTION

WAC 308-101-070 Signatures. (1) Legal representative signatures. An electronic document which requires a legal representative's signature may be signed in the following manner:

/s/ Jane Attorney
State Bar Number 12345
ABC Law Firm
123 South Fifth Avenue
Seattle, WA 98104
Telephone: 206-123-4567
Fax: 206-123-4567
Email: Jane.Attorney@lawfirm.com

(2) Nonattorney signatures. An electronic document which requires a nonattorney's signature may be signed in the following manner:

/s/ John Citizen
123 South Fifth Avenue
Seattle, WA 98104
Telephone: 206-123-4567
Fax: 206-123-4567
Email: John.Citizen@email.com

(3) Law enforcement officer signatures on documents signed under penalty of perjury. Any document initiated by a law enforcement officer is presumed to have been signed when the officer uses his or her user ID and password to electronically submit the document to a court or prosecutor through the statewide electronic collision and traffic online records application, the justice information network data exchange, or a local secured system that the presiding judge designates by local rule. Unless otherwise specified, the signature shall be presumed to have been made under penalty of perjury under the laws of the state of Washington and on the date and at the place set forth in the report and/or citation.

NEW SECTION

WAC 308-101-080 Requests for hearing. (1) A request for a hearing shall be in writing;

(2) When no deadline for requesting a hearing or interview is provided in Title 46 RCW, or other law or rule of the department, a hearing or interview request must be post-marked or received by the hearings and interviews unit within fifteen days after notice is given;

(3) The hearing request form provided by the department shall include a statement that if the parties or witness(es) are hearing or speech impaired and/or non-English speaking, a qualified interpreter will be appointed at no cost to the parties or witnesses. The form shall include a section where the petitioner may request an interpreter and where he or she may identify the language and/or nature of the interpretive services needed;

(4) The request for hearing shall include the following information with respect to the petitioner:

- (a) Full name;
- (b) Mailing address;
- (c) Daytime telephone number, including area code;
- (d) Date of birth; and
- (e) Driver's license number.

(5) The written request for hearing shall be accompanied by the applicable nonrefundable filing fee, unless the petitioner is entitled to a waiver of the filing fee because of indigence, in which case a request to waive the hearing fee for indigence must be submitted with the hearing request and be on a form approved by the department;

(6) When the department denies an application for an indigent fee waiver, the petitioner shall be granted an additional ten days to submit payment of the hearing fee;

(7) **Submitting hearing request with fees:** The request for a hearing may be submitted to: Department of Licensing, Hearings and Interviews Unit, P.O. Box 9048, Olympia, WA 98507-9048;

(8) **Submitting hearings request without a fee:** If there is not filing fee or if the petitioner is entitled to or applies for a waiver of the filing fee because of indigence, the request must be submitted to: Department of Licensing, Hearings and Interviews Unit, P.O. Box 9031, Olympia, WA 98507-9031;

(9) The request for a hearing may also be submitted online if the petitioner meets the qualifications described on the web site at www.dol.wa.gov;

(10) If a request for hearing is denied, the department shall notify the petitioner and the petitioner's legal representative, if any, stating the reason(s) for the denial;

(a) The department (or a hearings examiner) may set aside a denial of a hearing due to an untimely request if the petitioner establishes good cause for the failure to timely request a hearing;

(b) In the alternative, the department may grant a hearing on the merits subject to a preliminary determination by a hearings examiner on the issue of whether the hearing request was timely filed or, if untimely, whether there was good cause to file a late hearing request. If the petitioner fails to establish the hearing request was timely filed or that there was good cause for a late hearing request, the department's action shall be sustained or affirmed without further review.

NEW SECTION

WAC 308-101-090 Scheduling—Notice of hearing.

(1) The department shall mail a hearing notice to the petitioner or petitioner's legal representative in the time frame prescribed in Title 46 RCW. If no period is prescribed, the petitioner shall be served with a notice of hearing at least ten days before the date set for the hearing.

(2) The department's hearing notice will include the assigned examiner's name, a phone number at which he or she may be contacted, and other information concerning the hearing. The department's notice will also include a telephone number and a TDD number that any party or witness may call to request special accommodations. The notice must also include:

(a) A statement of the time, place, and nature of the hearing.

(b) A statement of the legal authority under which the hearing is to be held;

(c) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter.

NEW SECTION

WAC 308-101-100 Place of hearing. (1) All hearings and interviews will be scheduled telephonically, unless the hearing is required by law to be in person or an in-person hearing is requested in accordance with subsection (2) of this section.

(2) The petitioner or petitioner's legal representative may request that all or part of the hearing or interview be conducted in person. Such a request must be in writing stating the reasons and be directed to the assigned hearings examiner upon receipt of the hearing notice. The hearings examiner will have the sole discretion to grant or deny this request.

NEW SECTION

WAC 308-101-110 Notice of appearance. (1) If a petitioner has legal representation at the administrative hearing, the department shall be provided with the legal representative's name, address, and telephone number. The department may require the legal representative to file a written notice of appearance or to provide documentation that an absent petitioner has authorized the legal representative to appear on the party's behalf. The legal representative shall file a notice of withdrawal upon withdrawal of representation.

(2) When a legal representative has appeared in a matter, documents related to the hearing, including final orders, will only be served on the legal representative. Documents may be provided to a petitioner's legal representative via electronic distribution only, with the legal representative's agreement.

(3) For the purposes of this section, a "legal representative" means an attorney or supervised legal intern that is authorized to practice law in the state of Washington.

NEW SECTION

WAC 308-101-120 Continuances. (1) After a hearing has been scheduled, it may be continued, rescheduled, or adjourned only at the discretion of the hearings examiner.

(2) Requests for a continuance, to reschedule, or to adjourn must be made in writing, to the assigned hearings examiner, and shall include the basis for the request.

(3) Except in the case of an emergency, the hearings examiner must receive the continuance request at least two business days before the scheduled hearing. Absent an emergency, requests made with less than two business days' notice may be summarily denied.

(4) The hearings examiner may continue, reschedule, or adjourn at any time, including on the date of the administrative hearing.

(5) A party shall not consider a hearing continued, rescheduled, or adjourned until notified by the hearings examiner or his or her designee.

(6) The hearings examiner may require the party who requests a continuance, to reschedule, or to adjourn to submit documentary evidence that substantiates the reason for the request.

(7) A second request for a continuance, to reschedule, or to adjourn will only be granted in the event of an emergency and at the discretion of the assigned hearings examiner.

(8) Notwithstanding any provisions of this section to the contrary, a hearings examiner may continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear. The hearings examiner must continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear and the petitioner is a holder of a commercial driver's license or was operating a commercial motor vehicle at the time of the driver's arrest. A hearing continued under this subsection must be adjourned until such time as the subpoena may be enforced under RCW 7.21.060.

NEW SECTION**WAC 308-101-130 Agreements to schedule hearings under RCW 46.20.308 past the time frame required by law.**

(1) The department presumes any of the following actions taken by the petitioner is a request that the department agree to extend the hearing beyond the time frame required by RCW 46.20.308:

- (a) A request for a continuance;
- (b) A request to hold an in-person hearing when the request cannot be accommodated within the time frame required;
- (c) A request to set aside a default order;
- (d) A request for a subpoena when service cannot be accommodated within the time frame required;
- (e) Remitting insufficient funds to satisfy the hearing fee;
- (f) Any other action taken by the petitioner that makes the scheduling of the hearing within the time frame required by law impracticable.

(2) A hearings examiner's decision to grant any of the petitioner's requests in subsection (1) of this section constitutes the department's assent to extend the hearing past the time frame required by law.

(3) If a person requests one of the actions in subsection (1) of this section but affirmatively declines to agree to extend the time frame required by law, the hearings examiner may direct the hearing to proceed as originally scheduled or may take any other action that protects the petitioner's right to be heard and the public's interest in a speedy resolution of the matter.

(4) The department must stay a driver's license suspension any time a timely hearing request has been received but it is otherwise impracticable to hold the hearing within the time frame required by law.

NEW SECTION

WAC 308-101-140 Cancellation of hearings. (1) If the petitioner elects to cancel his or her request for a hearing, he or she must notify the department of his or her intent to do so in writing or orally on the record.

(2) **Entry into deferred prosecution:** A stay of a suspension or revocation granted pursuant to the provisions of RCW 46.20.308(9) does not automatically result in a cancellation of a requested hearing. Absent a written cancellation under subsection (1) of this section, the hearing will proceed and the results will be sent to the petitioner. If the suspension is sustained after the hearing, the stay of the action shall continue but any appeal of the findings and conclusions must be undertaken within thirty days of service of the results.

NEW SECTION

WAC 308-101-150 Subpoenas. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 46.20.308(7). All subpoenas shall direct the witness to appear by telephone unless otherwise agreed to by the hearings examiner.

(2) Every subpoena shall be submitted on a form approved by the department, available on the internet at

www.dol.wa.gov, for approval by a hearings examiner. If approved, the hearings examiner may either sign and issue the subpoena back to the party requesting the subpoena or direct the requesting party, by telephone, electronic mail, or other reliable means, to note the hearings examiner's approval on the subpoena.

(a) A subpoena to a person to provide testimony at a hearing shall specify the date and time set for hearing.

(b) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for hearing, or another reasonably convenient time and place in advance of the hearing.

(3) A subpoena must be personally served by a suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. Proof of service shall be made by affidavit or declaration under penalty of perjury, and must be filed with the hearings examiner at least two days prior to the hearing. If the subpoena is served by personal service, proof of service must include a copy of the subpoena that shows it was received by the law enforcement agency. Service by certified mail must be preapproved by the hearings examiner. Service of a subpoena on a law enforcement officer may be effected by serving the subpoena upon the officer's employer.

(4) The hearings examiner may condition issuance of the subpoena upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) A subpoena must be properly served five days prior to the date of the hearing.

NEW SECTION**WAC 308-101-155 Filing of exhibits and other documents with the department.**

(1) Any document submitted to the hearings and interviews unit must include the petitioner's case number assigned by the unit, if a case number has been assigned.

(2) A petitioner may submit documents for consideration via any one of the following methods:

(a) U.S. mail addressed to: Department of Licensing, Hearings and Interviews Unit, P.O. Box 9030, Olympia, WA 98507-9030.

(b) Facsimile transmission to the assigned hearings examiner.

(c) An internet portal made available by the department.

(d) Email to the hearings examiner, but only with the hearings examiner's preapproval.

NEW SECTION

WAC 308-101-160 Evidence. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of these rules.

(2) Evidence including testimony and documentary evidence, is admissible if received prior to, or during, the hearing.

(3) The hearings examiner shall rule on the admissibility and weight to be accorded to all evidence submitted at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the hearings examiner it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The hearings examiner may exclude evidence that is irrelevant, immaterial, or unduly repetitious. The admissibility of evidence shall be liberally construed to effect the intent and purpose of the hearings covered by these rules.

(4) **Oral testimony:** Law enforcement officers or other persons with knowledge relevant to the hearing may appear and testify without notice. Such testimony shall not preclude the admissibility of any documents submitted.

(5) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the hearings examiner, be grounds for striking all testimony previously given by such witness on related matter.

(6) **Documentary evidence:** Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. When only portions of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(7) Official notice may be taken of: (a) Any judicially cognizable facts; (b) technical or scientific facts within the agency's specialized knowledge; and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during the hearing of the material so noticed and the sources thereof and they shall be afforded an opportunity to contest the facts and materials so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

NEW SECTION

WAC 308-101-170 Video evidence. If the petitioner wishes to submit video evidence, the petitioner shall be responsible for the costs of preparing a copy to be admitted as evidence. Video evidence shall be submitted sufficiently in advance of the hearing to allow the hearings examiner the opportunity to review it prior to the hearing. The hearings examiner may require a time waiver from the petitioner in order to reschedule the hearing and satisfy this provision when needed. Video evidence must be submitted by DVD and in a format which allows the DVD to be viewed on the department's equipment. Any costs associated with this requirement is to be the responsibility of the petitioner.

NEW SECTION

WAC 308-101-180 Format and length for briefs. (1) The text of any brief must be typed or printed in a proportionally spaced typeface and must appear in print as twelve point or larger type with no more than ten characters per inch and

double-spaced. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as ten point or larger type and be the equivalent of single-spaced. Quotations may be the equivalent of single-spaced. Except for materials in an appendix, the type-written or printed material in the brief may not be reduced or condensed by photographic or other means.

(2) Briefs shall not exceed twenty pages. For the purpose of determining compliance with this rule, appendices are not included. For good cause, the hearings examiner may grant a motion to file an over-length brief.

(3) Unpublished opinions of the Washington court of appeals are those opinions not published in the *Washington Appellate Reports*. Unpublished opinions of the court of appeals have no precedential value and are not binding on any court. However, unpublished opinions of the court of appeals filed on or after March 1, 2013, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the hearings examiner deems appropriate.

NEW SECTION

WAC 308-101-190 Interpreters. (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in an adjudicative proceeding, the department shall appoint an interpreter to assist the party or witness during the hearing. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in hearings are governed by the provisions of chapters 2.42 and 2.43 RCW.

(2) Relatives of any participant in a proceeding and employees of the department involved in a proceeding shall not be appointed as interpreters in the proceeding unless authorized by the petitioner.

(3) The appointing authority shall make a determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired or non-English-speaking person. This determination shall be based upon the testimony or stated needs of the impaired or non-English-speaking person, the interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representatives may question the interpreter as to his or her qualifications and impartiality.

(4) If in the opinion of the impaired or non-English-speaking person, the appointing authority or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired or non-English-speaking person, the appointing authority shall appoint another interpreter.

(5) The department shall attach to or include in the decision or order a telephone number to request a visual translation or sight translation.

(6) If the party has a right to review the order or decision, the hearings examiner shall orally inform the party during the hearing of the right and of the time limits to request review.

(7) The department shall pay interpreter fees and expenses.

(8) The consecutive mode of foreign language interpretation shall be used unless the hearings examiner and interpreter agree that simultaneous interpretation will advance fairness and efficiency.

(9) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

NEW SECTION

WAC 308-101-200 Testimony under oath or affirmation. Every person called as a witness and who is giving oral testimony in a hearing shall swear or affirm that the testimony he or she is about to give in the hearing shall be the truth according to the provisions of RCW 5.28.020 through 5.28.060. If the witness is testifying from outside the jurisdiction, the hearings examiner may require the witness to agree to be bound by the laws of the state of Washington for purposes of the oath or affirmation.

NEW SECTION

WAC 308-101-210 Conduct of hearings. Hearings are open to public observation. To the extent that a hearing is conducted by telephone or other electronic means, the availability of public observation is satisfied by giving members of the public an opportunity to hear or inspect the agency's record. The hearings examiner's authority includes, but shall not be limited to, the authority to:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas pursuant to RCW 46.20.308(7);
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on offers of proof and receive relevant evidence;
- (6) Order the exclusion of witnesses upon a showing of good cause;
- (7) Afford the petitioner the opportunity to respond, present evidence, conduct cross-examination, and submit rebuttal evidence. The hearings examiner may question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;
- (8) Call additional witnesses and request and/or obtain additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by the petitioner;
- (9) Examine and admit the official records of the department, subject to full opportunity, including the opportunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;
- (10) Examine and admit public records including, but not limited to, maps, policy and procedure manuals, breath testing equipment manuals and the Washington state patrol breath test section web site at any time before, during, or after the hearing, subject to full opportunity, including the oppor-

tunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;

(11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(12) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(13) Issue an order of default;

(14) Recess the hearing to a later time to accommodate scheduling conflicts. Hearings are ordinarily scheduled to be one hour in length;

(15) Take any other action necessary and authorized by any applicable statute or rule; and

(16) Waive any requirement of these rules unless petitioner shows that he or she would be prejudiced by such a waiver.

NEW SECTION

WAC 308-101-220 Default. (1) In the event that the person who requested an interview or hearing is not available at the time it is scheduled via the manner of appearance directed in the notice of interview or hearing, or as subsequently modified in writing or orally on the record, no interview or hearing shall be held. An order of default shall be entered and the department's proposed action shall be sustained.

(2) A person who fails to appear at an interview waives his or her right to request a formal hearing.

(3) Within seven days after service of a default order, the petitioner may file a written motion requesting that the order of default be vacated, and stating the grounds relied upon for the motion. In determining whether the default should be set aside, the hearings examiner shall consider whether there was good cause for the nonappearance.

NEW SECTION

WAC 308-101-230 Final orders. (1) Every decision and final order shall:

(a) Be correctly captioned as to the name of the department of licensing and name of the proceeding;

(b) Designate all parties and representatives participating in the proceeding;

(c) Contain a final order disposing of all contested issues; and

(d) Contain a statement describing the right to appeal.

(2) In the event the original hearings examiner is unavailable, the department may assign a case to another hearings examiner to either hear the case if the record has not closed, or in a case where the record is closed, make a determination as to the findings of fact and conclusions of law based on the record submitted.

(3) At any stage prior to commencement of the hearing the department may reassign a matter to a different hearings examiner.

NEW SECTION

WAC 308-101-240 Probation in habitual traffic offender matters. (1) Upon reinstatement after a habitual

traffic offender revocation, a person must be placed on probation for one year.

(2) Every stay order issued under RCW 46.65.060 and any reinstatement order of the driving privilege granted under RCW 46.65.080 or 46.65.100 are granted subject to the following probationary terms and conditions:

(a) The individual must not be convicted of or found to have committed any of the following types of offenses during the period of probation or the duration of the stay:

- (i) Vehicular homicide - RCW 46.61.520;
 - (ii) Vehicular assault - RCW 46.61.522;
 - (iii) Driving under the influence - RCW 46.61.502;
 - (iv) Driver under twenty-one consuming alcohol or marijuana - RCW 46.61.503;
 - (v) Physical control of vehicle under the influence - RCW 46.61.504;
 - (vi) Driving a commercial motor vehicle with alcohol or THC in system;
 - (vii) Driving while license suspended or revoked 1st or 2nd degree (includes driving violation of an occupational/restricted driver's license) - RCW 46.20.342;
 - (viii) Hit and run (occupied) - RCW 46.52.020;
 - (ix) Reckless driving - RCW 46.61.500;
 - (x) Attempting to elude a police vehicle - RCW 46.61.024;
 - (xi) Felony involving motor vehicle - RCW 46.20.285(4);
 - (xii) Ignition interlock violation - RCW 46.20.720;
 - (xiii) Violation of an occupational or restricted license - RCW 46.20.410;
 - (xiv) Operating a vehicle without an ignition interlock device - RCW 46.20.740;
 - (xv) Circumventing ignition interlock device - RCW 46.20.750;
 - (xvi) Open container violation (alcoholic beverages) - RCW 46.61.519;
 - (xvii) Open container violation (marijuana) - RCW 46.61.745;
 - (xviii) A conviction for any reduced or amended alcohol or drug-related driving offense.
- (b) Two or more moving violations received within a twelve-month period as defined in WAC 308-104-160 during the period of probation or the duration of the stay;
- (c) Any of the following:
- (i) A reported driving incident with a detectable alcohol concentration;
 - (ii) A revocation or disqualification for refusing a breath or blood test as provided by RCW 46.20.308, 46.20.3101, 46.25.090, or 46.25.120 from an incident;
 - (iii) Entry into a deferred prosecution program for any alcohol or drug-related offense;
 - (iv) A report of positive drug/alcohol test or refusal - RCW 46.25.090;
 - (v) A violation of the terms of any mandatory court probation - RCW 46.61.5055.
- (d) Compliance with a state approved alcohol/drug treatment program as set forth in chapter 70.96A RCW and WAC 308-104-170.

(3) A violation of these terms will result in:

(a) If on probation as a habitual traffic offender: The revocation of the driving privilege for the balance of the habitual traffic offender revocation period as well as any further driving while revoked revocation(s), or for one year, whichever is longer;

(b) If subject to a stay: Cancellation of the stay and revocation of the driving privilege for seven years.

(4) Review of violations of the terms and conditions of the probation or stay may be sought via the procedure provided in RCW 46.20.245.

NEW SECTION

WAC 308-101-250 Reconsideration of final order. (1) Motions for reconsideration are limited to cases heard under the implied consent law, RCW 46.20.308.

(2) Grounds for a petition for reconsideration are limited to evidence or legal argument which are material to the petitioner and were not produced at the time of the hearing, or for other good and sufficient reason as determined by the hearings examiner.

(3) The petition must state with particularity any new evidence or new legal argument that is proposed and why it could not have been discovered using due diligence prior to the hearing. The petition must specify with particularity the portions of the initial order to which the petition applies.

(4) A petition for reconsideration of an order shall be filed with the hearings and interviews unit within ten days of the date the final order was mailed to the petitioner.

(5) The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(6) If the petition is granted in whole or in part, a new order shall be issued in the same form as the original order, and shall include the designation "amended" in its title. This amended order shall reference the petition for reconsideration in its preamble, which sets out what the hearings examiner considered. Any amended order shall include the "findings of fact and conclusions of law" from the original final order with amendments.

(7) The relief granted pursuant to a petition for reconsideration is limited to review of the designated evidence and/or argument as identified in the petition. At the hearings examiner's discretion, a supplemental hearing may be scheduled. Such a petition is not grounds for a new hearing, and the record already established shall remain undisturbed.

(8) A petition for reconsideration does not stay the department's action on the petitioner's driving privilege as ordered by the original final order. A petitioner seeking a stay must file a separate petition for that purpose. The hearings examiner will grant a stay only if the hearings examiner determines that it is likely that the petitioner will prevail and the action be reversed and that denying the stay will create irreparable harm to the petitioner. If the hearings examiner grants such a petition for a stay, the hearings examiner shall sign an order releasing the action and crediting any time already served, and subsequently sign an order sustaining or

reversing the action, as determined by the amended final order. Disposition denying a stay is not subject to review.

(9) An amended final order shall be issued either denying reconsideration or, in the event reconsideration is granted, dissolving or modifying the original final order. The date of the amended final order begins the thirty-day period for the petitioner to appeal the amended final order.

(10) The filing of a petition for reconsideration is not a prerequisite for filing an appeal. An order denying reconsideration is not subject to appeal.

NEW SECTION

WAC 308-101-260 Significant decisions in driver license cases. (1) The department will use the process outlined in this section to nominate, select, and index significant decisions hearings related to driver's licenses in the following types of adjudicative proceedings related to a sanction of the driving privilege:

- (a) The implied consent law (RCW 46.20.308);
- (b) The financial responsibility law (chapter 46.29 RCW);
- (c) The habitual traffic offender law (chapter 46.65 RCW);
- (d) The Uniform Commercial Driver's License Act (chapter 46.25 RCW);
- (e) Any formal hearing affecting the driving privilege conducted pursuant to the provisions of RCW 46.20.329 through 46.20.333.

(2) For the purposes of this section, a significant decision is a final order or a portion of a final order in an adjudicative proceeding that is of substantial importance to the department in carrying out its duties. Generally, an order is of substantial importance only if it analyzes and applies a statute or rule under the department's authority, demonstrates the department's reasoning as to a frequently recurring legal issue, provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts.

(3) Any person may nominate a final adjudicative order to be evaluated for indexing by completing an Order Index Nomination Request form. The form can be obtained from the department's web site at www.dol.wa.gov and returned to: Hearings and Interviews Unit, P.O. Box 9031, Olympia, WA 98507-9031, along with a copy of the nominated order.

(4) The director or director's designee shall make a final decision as to whether to select the nominated order as a significant decision based on the criteria in subsection (2) of this section, and that decision is not appealable.

(5) A decision that has been selected by the director as significant shall be maintained in a separate index. The index shall at a minimum contain a description of the type of document, name of parties, brief description of the legal subjects and pertinent legal citation. A copy of the index and a copy of the significant decision will be made available on the department's web site at www.dol.wa.gov. The general public records index maintained under WAC 308-10-067 will contain a reference to the specific location and identification of significant decision index and copies of the significant decisions.

(6) The department shall periodically update and review the index to verify that the indexed documents continue to meet the criteria in subsection (2) of this section. The department may, at any time, delete a document from an index. Under RCW 42.56.070(6), a significant decision may not be cited in a proceeding if it has not been indexed.

NEW SECTION

WAC 308-102-085 Agreements for payment of damages—Effect on administrative proceedings. An individual that submits a written payment agreement to the department in accordance with RCW 46.29.140, waives any further review to the validity of the department's action. Any pending document review, administrative interview, or formal hearing shall be canceled upon receipt of the written payment agreement.

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-100 Request for informal settlement—Effect, timeliness. Pursuant to WAC 10-08-230, regarding informal settlements, any person notified of the requirement of depositing security and suspension for failure to deposit security under the Financial Responsibility Act, chapter 46.29 RCW, may within fifteen days of the date of the notice of intent to suspend his or her driver's license or nonresident privilege to drive request (~~(either)~~) an interview (~~(or document review)~~) before a presiding officer. The request may be oral or written, but if made orally, such request must be confirmed by the person in writing within five days following such request.

Upon receipt of a timely request for interview (~~(or document review)~~), the suspension shall be stayed pending the outcome of the document review or interview.

If the person does not request (~~(a document review or)~~) an interview within the time specified above, or fails to attend an interview scheduled at the person's request, said person shall have waived his or her right to any further administrative remedies, including the formal hearing, and the suspension of the person's driver's license or driving privilege shall become effective.

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-190 Informal settlement—(~~Docu~~ment review ~~or~~) Interview—Decision. Upon conclusion of (~~(a document review or)~~) an interview the presiding officer shall make findings on the matter under consideration and shall sustain, modify, or reverse the department's notice of intention to suspend and/or the amount of security required. The department shall notify the person of the presiding officer's decision and said person's right to request a formal administrative hearing in writing by first class mail sent to the last address of record. A copy of the presiding officer's findings shall be sent to the person with the notice of the decision and right to a formal hearing. Upon receipt of a timely request for formal hearing the order for the deposit of security and

suspension for failure to deposit security shall be stayed pending the results of the hearing.

AMENDATORY SECTION (Amending WSR 92-08-045, filed 3/25/92, effective 4/25/92)

WAC 308-102-200 Request for adjudicative proceeding—Formal hearing. Any person who is aggrieved by the interview ~~((or document review decision))~~ of the department may request a formal hearing on the matter. The request for formal hearing must be in writing and must be addressed to the department of licensing and postmarked within fifteen days following the mailing of the decision of the department to the person. Failure to make timely request for a formal hearing to the department shall be considered a withdrawal of the person's request for adjudicative proceedings and shall result in a waiver of the person's right to such hearing and the decision of the department shall become final.

If a timely request for a formal hearing is made, the department shall notify the person of the time ~~((and place))~~ of such hearing in writing, and mail such notice to the person's last address of record, at least twenty days in advance of the hearing date. In accordance with RCW 34.05.449(3), the hearing shall be by telephone or other electronic means. If in the discretion of the presiding officer an in-person hearing is necessary, the hearing shall be held within a reasonable distance of the county wherein the person resides, or, if the person is a nonresident of Washington, in the county where the accident occurred. The notice shall include the information required by RCW 34.05.434(2).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-102-130 Informal settlement—Document review.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 308-103-010 Applicability.
 WAC 308-103-020 Definitions.
 WAC 308-103-030 Computation of time.
 WAC 308-103-040 Requests for hearings.
 WAC 308-103-050 Scheduling—Notice of hearing.
 WAC 308-103-060 Notice of appearance.
 WAC 308-103-070 Continuances.
 WAC 308-103-080 Deferred prosecutions—Cancellation of hearings.
 WAC 308-103-090 Subpoenas.
 WAC 308-103-100 Evidence—Exhibits.
 WAC 308-103-110 Video evidence.
 WAC 308-103-120 Evidence.

WAC 308-103-125 Format and length for briefs.

WAC 308-103-130 Interpreters.

WAC 308-103-140 Testimony under oath or affirmation.

WAC 308-103-150 Conduct of hearings.

WAC 308-103-160 Defaults.

WAC 308-103-170 Reserved.

WAC 308-103-180 Final order.

WAC 308-103-190 Reconsideration and appeals.

AMENDATORY SECTION (Amending WSR 00-18-069, filed 9/1/00, effective 10/2/00)

WAC 308-104-025 Effect of accumulation of traffic offenses. (1) For the purposes of RCW 46.20.291(3), whenever the official records of the department show that a person has committed ~~((at least))~~ four or more traffic offenses within a ~~((twelve month))~~ one-year period, or ~~((at least))~~ five or more traffic offenses within a ~~((twenty-four month))~~ two-year period, the department may ~~((require the person to appear for a driver improvement interview, as provided in chapter 46.20 RCW: Provided, That when a person has committed fewer traffic offenses than set forth in this section, the department may require the person to appear for a driver improvement interview or suspend or deny the person's driving privilege when such action appears to be in the interest of the safety of other persons on the highways. For purposes of this section, the driver improvement interview may be conducted in a group setting.~~

Failure to appear at the interview may result in a suspension or denial of the driving privilege.) provide notice to the driver warning them of the risk of crash involvement and the possible consequences of further action against the person's license under this section or chapter 46.65 RCW.

(2) Whenever the official records of the department show that a person has committed six or more traffic offenses within a one-year period, or seven or more traffic offenses within a two-year period, the department must issue a notice of suspension denying the person's driving privilege for sixty days and establishing a three hundred sixty-five day period of probation to begin when the period of suspension ends. During the period of probation, a person must not be convicted of an additional traffic offense.

(3) At a hearing requested by the driver to contest the notice of suspension, the accumulation of violations in subsection (2) of this section shall be considered prima facie evidence of violations of such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways.

(4) If a person is convicted of a traffic offense during the period of probation, the department must impose an additional thirty-day suspension to run consecutively with any suspension already being served under this section and the period of probation must be extended for three hundred sixty-five days from the date the additional suspension period ends. A person shall have the opportunity to contest the additional period of suspension under the procedure authorized by RCW 46.20.245.

(5) For purposes of this section "traffic offense" means a conviction as defined in RCW 46.20.270(~~((4))~~) (3), or a finding that a traffic infraction has been committed as defined in RCW 46.20.270(5), of a moving violation as defined in WAC 308-104-160. A traffic offense committed under the provisions of chapter 46.37 RCW by a commercial driver with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-104-035 Interest of safety.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-104-350 Significant decisions in driver license cases.

WSR 18-07-028
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed March 12, 2018, 9:47 a.m.]

Supplemental Notice to WSR 17-18-104 and 18-05-099. Preproposal statement of inquiry was filed as WSR 16-22-072.

Title of Rule and Other Identifying Information: Chapter 392-400 WAC regarding student discipline.

Hearing Location(s): On May 2, 2018, at 1:00 to 3:00 p.m., at Northeast Washington Educational Service District 101, 4202 South Regal Street, Spokane, WA 99223. This hearing is in addition to hearings being held on March 30, 2018 (Olympia) and April 2, 2018 (Tukwila).

Date of Intended Adoption: May 11, 2018.

Submit Written Comments to: Dierk Meierbachtol, P.O. Box 47200, Olympia, WA 98504-7200, email DisciplineRuleComments@k12.wa.us, fax 360-753-4201, by May 2, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email kristin.murphy@k12.wa.us, by April 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 28A.600-.015 requires the office of superintendent of public instruction (OSPI) to adopt lawful and reasonable rules prescribing the substantive and procedural due process guarantees of students in public schools. These rules are found in chapter 392-400 WAC.

On September 6, 2017, OSPI filed proposed revisions to chapter 392-400 WAC (WSR 17-18-104) that were intended to (1) align student discipline definitions with new require-

ments and statutory language in HB 1541 (chapter 72, Laws of 2016); (2) provide further guidance on the requirements in HB 1541, including specific guidance on the provision of educational services while a student is suspended or expelled; and (3) increase clarity and readability of the entire chapter.

Following the public comment period, OSPI has made revisions to the rule that are substantially different from the rule proposed in WSR 17-18-104. OSPI is therefore providing supplemental notice under RCW 34.05.340 that OSPI is reopening the proceedings for public comment on proposed rule. In addition to the May 2, 2018, hearing listed on this notice, hearings are being held March 30 and April 2, 2018 (WSR 18-05-099).

The revised proposed rules include the following changes:

- "Culturally responsive" is defined to have the same meaning as "cultural competency" in RCW 28A.410-.270.
- WAC 392-400-330 and 392-400-335 are revised to provide conditions, limitations, and procedures for classroom exclusions that do not exceed the balance of a school day. The revised proposed rules clarify that a student may not be removed from school during a classroom exclusion unless the school district provides notice and due process for a short-term suspension, expulsion, or emergency expulsion.
- WAC 392-400-430, regarding general conditions and limitations for suspensions and expulsions, is revised to clarify that this section does not preclude a school district from administratively transferring a student, provided that the basis for the transfer is not the student's behavioral violation.
- WAC 392-400-450 is revised to provide an additional opportunity for parents to participate. At an initial hearing in which the principal is considering administering a long-term suspension or expulsion, the principal must make a reasonable attempt to contact the student's parents to provide an opportunity for the parents to participate in the initial hearing in person or by telephone.
- WAC 392-400-480 is revised to provide an option to request the school board review and reconsider a school district's decision to extend a student's expulsion.
- WAC 392-400-510 is revised to limit the use of emergency expulsions to situations where a school district has sufficient cause to believe that a student's presence poses an immediate and continuing danger to other students or school personnel.
- WAC 392-400-810 is revised to allow a school district, following notice and due process, to continue to administer a long-term suspension or expulsion administered by another school district when the student's behavioral violation would also be a violation of the district's discipline policy.

Relevant public comment received regarding the initial proposed rule will be considered in the new proceeding.

Reasons Supporting Proposal: These revisions to the student discipline rules incorporate substantial stakeholder feedback, including feedback from the OSPI student discipline task force. The revised rules (1) simplify and clarify due pro-

cess procedures for school districts, students, and families; (2) eliminate problems of interpretation and problems of practice that are a result of confusing or vague terminology; (3) encourage fewer adversarial resolutions to discipline-related issues and the use of best practices to minimize the use of exclusionary discipline practices; (4) provide for more collaborative and culturally sensitive and culturally responsive reengagement process[es]; and (5) increase opportunities for student, family, and community engagement in discipline, including in the development of discipline policies and in resolving discipline-related issues.

The supplemental revised rules reflect comments that OSPI received on the proposed revisions filed on September 6, 2017.

Statutory Authority for Adoption: RCW 28A.600.015, 28A.600.020.

Statute Being Implemented: RCW 28A.600.010 through 28A.600.022, 28A.320.211.

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

Name of Agency Personnel Responsible for Drafting: Dierk Meierbachtol, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-6004; Implementation: Joshua Lynch, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-4969; and Enforcement: Not applicable.

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).

March 9, 2018

Chris P. S. Reykdal
State Superintendent
of Public Instruction

Chapter 392-400 WAC

((PUPHLS)) STUDENT DISCIPLINE

NEW SECTION

WAC 392-400-010 Purpose. The purpose of this chapter is to ensure that school districts in Washington:

- (1) Provide due process to students;
- (2) Implement culturally responsive discipline policies and procedures that provide opportunity for all students to achieve personal and academic success;
- (3) Engage students, parents, families, and the community in decisions related to the development and implementation of discipline policies and procedures;
- (4) Improve fairness and equity in the administration of discipline;

(5) Administer discipline in ways that respond to the needs and strengths of students, support students in meeting behavioral expectations, and keep students in the classroom to the maximum extent possible;

(6) Provide educational services that students need to complete their education without disruption; and

(7) Facilitate collaboration between school personnel, students, and families to ensure successful reentry into the classroom following a suspension or expulsion.

NEW SECTION

WAC 392-400-015 Authority. The authority for this chapter is RCW 28A.600.015 and 28A.600.020, which require the office of superintendent of public instruction to establish rules that prescribe the substantive and procedural due process rights of students served by any program or activity conducted by, or on behalf of, school districts.

NEW SECTION

WAC 392-400-020 Application. (1) This chapter establishes the minimum procedural and substantive due process rights of students when they may be subject to discipline in Washington school districts. A school district may establish additional due process protections for students consistent with federal statutes and regulations, state statutes, common law, and rules prescribed by the office of superintendent of public instruction.

(2) This chapter must be construed in a manner consistent with the following laws and rules:

(a) RCW 28A.600.010 through 28A.600.022 and 28A.320.211, regarding the administration of student discipline;

(b) RCW 28A.300.042, regarding the collection, reporting, and disaggregation of student-level discipline data;

(c) Chapter 392-190 WAC, prohibiting unlawful discrimination in Washington public schools, including the requirement under WAC 392-190-048 that school districts annually review disaggregated discipline data to identify and address disproportionality in the administration of discipline on the basis of sex, race, limited-English proficiency (i.e., English learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and Part B of the Individuals with Disabilities Education Act;

(d) WAC 392-172A-05140 through 392-172A-05175, and 34 C.F.R. Part 300.530 through 300.536, regarding the discipline of students with disabilities under the Individuals with Disabilities Education Act;

(e) RCW 28A.165.035, regarding the state menu of best practices and strategies for behavior; and

(f) RCW 28A.415.410 and 28A.415.420, regarding training to support school district personnel in implementing discipline policies and procedures and gaining knowledge and skills in cultural competence.

NEW SECTION

WAC 392-400-025 Definitions. As used in this chapter the term:

(1) "Behavioral violation" means a student's behavior that violates a school district's discipline policy adopted under WAC 392-400-110.

(2) "Classroom exclusion" means the exclusion of a student from a classroom or instructional or activity area for behavioral violations, subject to the requirements in WAC 392-400-330 and 392-400-335.

(3) "Culturally responsive" has the same meaning as "cultural competency" in RCW 28A.410.270.

(4) "Discipline" means any action taken by a school district in response to behavioral violations.

(5) "Disruption of the educational process" means the interruption of classwork, the creation of disorder, or the invasion of the rights of a student or group of students.

(6) "Emergency expulsion" means the removal of a student from school because the student's presence poses an immediate and continuing danger to other students or school personnel, subject to the requirements in WAC 392-400-510 through 392-400-530.

(7) "Expulsion" means a denial of admission to the student's current school placement in response to a behavioral violation, subject to the requirements in WAC 392-400-430 through 392-400-480.

(8) "Length of an academic term" means the total number of school days in a single trimester or semester, as defined by the school board.

(9) "Other forms of discipline" means actions used in response to behavioral violations, other than classroom exclusion, suspension, expulsion, or emergency expulsion, which may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(10) "Parent" has the same meaning as in WAC 392-172A-01125.

(11) "School business day" means any calendar day, except Saturdays, Sundays, or any federal, state, or school holiday, when the office of the superintendent of a school district is open to the public for business.

(12) "School board" means the governing board of directors of a local school district.

(13) "School day" means any day or partial day that students are in attendance at school for instructional purposes.

(14) "Suspension" means a denial of attendance in response to a behavioral violation from any subject or class, or from any full schedule of subjects or classes, but not including classroom exclusions, expulsions, or emergency expulsions.

(a) "In-school suspension" means a suspension in which a student is excluded from the student's regular educational setting but remains in the student's current school placement for up to ten consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(b) "Long-term suspension" means a suspension in which a student is excluded from school for more than ten consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(c) "Short-term suspension" means a suspension in which a student is excluded from school for up to ten consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

DISCIPLINE POLICIES AND PROCEDURESNEW SECTION

WAC 392-400-110 Discipline policies and procedures—Development, review, and distribution. (1) **School district policies and procedures.** A school district must adopt written policies and procedures for supporting students in meeting behavioral expectations and administering discipline, consistent with the model policy developed under RCW 28A.345.090, that:

(a) Clearly state the types of behaviors for which discipline, including suspension and expulsion, may be administered;

(b) Have a real and substantial relationship to the lawful maintenance and operation of the school district including, but not limited to, the preservation of the health and safety of students and employees and the preservation of an educational process that is conducive to learning;

(c) Provide for early involvement of parents in efforts to support students in meeting behavioral expectations;

(d) Provide that school district personnel make every reasonable attempt to involve parents and students in the resolution of behavioral violations for which discipline may be administered;

(e) Identify other forms of discipline that school personnel should administer before or instead of administering classroom exclusion, suspension, or expulsion to support students in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035;

(f) Identify school district personnel with the authority to administer classroom exclusions, suspensions, expulsions, emergency expulsions, and other forms of discipline;

(g) Establish appeal and review procedures related to the administration of suspensions, expulsions, and emergency expulsions, consistent with WAC 392-400-430 through 392-400-530;

(h) Establish grievance procedures to resolve parents' or students' disagreements related to the administration of classroom exclusions and other forms of discipline, including discipline that excludes a student from transportation or extracurricular activity. The procedures must, at a minimum, include an opportunity for the student to share the student's perspective and explanation regarding the behavioral violation;

(i) Describe the types of educational services the school district offers to students during a suspension or expulsion and the procedures to be followed for the provision of educational services under WAC 392-400-610;

(j) Provide for reengagement meetings and plans, consistent with WAC 392-400-710; and

(k) Provide for readmission of students who have been suspended or expelled.

(2) **Development and review.** A school district must develop and periodically review discipline policies and procedures with the participation of school district personnel, students, parents, families, and the community. During the development and review of discipline policies and procedures, the school district must use disaggregated data collected under RCW 28A.300.042 to:

(a) Monitor the impact of the school district's discipline policies, procedures, and practices; and

(b) Update the school district's discipline policies and procedures to improve fairness and equity in the administration of discipline.

(3) **Distribution of policies and procedures.** A school district must make discipline policies and procedures available to families and the community. The school district must annually provide the district's discipline policies and procedures to all district personnel, students, and parents, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964. The school district must ensure district employees and contractors are knowledgeable of the discipline policies and procedures.

CLASSROOM EXCLUSIONS

NEW SECTION

WAC 392-400-330 Classroom exclusions—Conditions and limitations. (1) **Authority to administer classroom exclusions.**

(a) **Teacher authority.** A teacher may exclude a student from the teacher's classroom or instructional or activity area for behavioral violations that disrupt the educational process while the student is under the teacher's immediate supervision, subject to the requirements in this section and WAC 392-400-335.

(b) **Other school personnel authority.** A school district may authorize other school personnel to exclude a student from a classroom or instructional or activity area for behavioral violations of the district's discipline policy adopted under WAC 392-400-110, subject to the requirements in this section and WAC 392-400-335.

(2) **Other forms of discipline.** The teacher or other school personnel must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations, unless the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process. In administering other forms of discipline, the teacher or other school personnel may consider using best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(3) **Limitations on classroom exclusion.**

(a) **Duration of classroom exclusion.** A classroom exclusion may be administered for all or any portion of the balance of the school day in which the student was excluded from the student's classroom or instructional or activity area. When a student is excluded from the student's classroom or instructional or activity area for longer than the balance of the

school day, the school district must provide notice and due process for a suspension, expulsion, or emergency expulsion under this chapter.

(b) **Removal from school.** A student may not be removed from school during a classroom exclusion unless the school district provides notice and due process for a suspension, expulsion, or emergency expulsion under this chapter.

(4) **Assignments and tests.** The school district must provide the student an opportunity to make up any assignments and tests missed during the classroom exclusion.

NEW SECTION

WAC 392-400-335 Classroom exclusion—Notice and procedure. Following a classroom exclusion under WAC 392-400-330:

(1) **Notice to principal.** The teacher or other school personnel must report the classroom exclusion, including the behavioral violation that led to the classroom exclusion, to the principal or designee as soon as reasonably possible.

(2) **Notice to parents.** The teacher, principal, or designee must notify the student's parents regarding the classroom exclusion as soon as reasonably possible. The school district must ensure that this notification is in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(3) **Emergency circumstances.** When a teacher or school personnel administers a classroom exclusion on the grounds that the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process:

(a) The teacher or other school personnel must immediately notify the principal or designee; and

(b) The principal or designee must meet with the student as soon as reasonably possible and administer appropriate discipline.

(4) **Reporting.** The principal or designee must report all classroom exclusions, including the behavioral violation that led to each classroom exclusion, to the school district superintendent or designee.

SUSPENSIONS AND EXPULSIONS

NEW SECTION

WAC 392-400-430 Suspensions and expulsions—General conditions and limitations. A school district may administer suspensions and expulsions for behavioral violations, subject to the following requirements:

(1) **Parent involvement.** A school district must provide for early involvement of parents in efforts to support students in meeting behavioral expectations and must make every reasonable attempt to involve the student and parents in the resolution of behavioral violations.

(2) **Considerations.** Before administering any suspension or expulsion, a school district must consider the student's individual circumstances and the nature and circumstances of the behavioral violation to determine whether the suspension or expulsion, and the length of the exclusion, is warranted.

(3) **Preventing students from completing academic requirements.** A school district may not suspend the provision of educational services to a student in response to behavioral violations or administer discipline in a manner that would prevent a student from completing subject, grade-level, or graduation requirements.

(4) **Opportunity to receive educational services.**

(a) A school district must provide an opportunity for students to receive educational services during a suspension or expulsion under WAC 392-400-610.

(b) If a school district enrolls a student in another program or course of study during a suspension or expulsion, the district may not preclude the student from returning to the student's regular educational setting following the end date of the suspension or expulsion.

(c) Nothing in this section precludes a school district from administratively transferring a student, provided that the basis for the transfer is not the student's violation of the district's discipline policy adopted under WAC 392-400-110.

(5) **Reporting.** The principal or designee must report all suspensions and expulsions, and the behavioral violation that led to each suspension or expulsion, to the school district superintendent or designee within twenty-four hours after the administration of the suspension or expulsion.

(6) **Reentry.** After suspending or expelling a student, a school district must:

(a) Make reasonable efforts to return the student to the student's regular educational setting as soon as possible.

(b) Allow the student to petition for readmission at any time.

(7) **Absences and tardiness.** A school district may not suspend or expel a student from school for absences or tardiness.

(8) **Access to school district property.** When administering a suspension or expulsion, a school district may deny a student admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the district.

NEW SECTION

WAC 392-400-435 Short-term and in-school suspensions—Additional conditions and limitations. (1) **Other forms of discipline.** Before administering a short-term or in-school suspension, a school district must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(2) **Length of exclusion.** A school district may not administer a short-term or in-school suspension beyond the school year in which the behavioral violation occurred.

(3) **Grade-level limitations.**

(a) A school district may not administer a short-term or in-school suspension for a student in kindergarten through fourth grade for more than ten cumulative school days during any academic term; and

(b) A school district may not administer a short-term or in-school suspension for a student in grades five through twelve:

(i) For more than fifteen cumulative school days during any single semester; or

(ii) For more than ten cumulative school days during any single trimester.

(4) **School personnel.** When administering an in-school suspension, a school district must ensure school personnel:

(a) Are physically in the same location as the student to provide direct supervision during the duration of the in-school suspension; and

(b) Are accessible to offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes as required under WAC 392-400-610.

NEW SECTION

WAC 392-400-440 Long-term suspensions—Additional conditions and limitations. (1) **Other forms of discipline.** Before administering a long-term suspension, a school district must consider other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(2) **Limitations on long-term suspensions.** A school district may only administer a long-term suspension:

(a) For behavioral violations under RCW 28A.600.015 (6); and

(b) Only after the school district has determined that, if the student returned to school before completing a long-term suspension:

(i) The student would pose an imminent danger to students or school personnel; or

(ii) The student would pose an imminent threat of material and substantial disruption of the educational process.

(3) **Length of exclusion.**

(a) A long-term suspension may not exceed the length of an academic term.

(b) A school district may not administer a long-term suspension beyond the school year in which the behavioral violation occurred.

(4) **Grade-level limitations.** Except for a violation of WAC 392-400-820, a school district may not administer a long-term suspension for any student in kindergarten through fourth grade.

NEW SECTION

WAC 392-400-445 Expulsions—Additional conditions and limitations. (1) **Other forms of discipline.** Before administering an expulsion, a school district must consider other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(2) **Limitations on expulsions.** A school district may only administer an expulsion:

(a) For behavioral violations under RCW 28A.600.015 (6); and

(b) Only after the school district has determined that if the student returned to school before completing an expulsion, the student would pose an imminent danger to students or school personnel.

(3) **Length of exclusion.** An expulsion may not exceed the length of an academic term, unless the principal or designee petitions the school district superintendent for extension of an expulsion under WAC 392-400-480, and the petition is granted.

(4) **Grade-level limitations.** Except for violations of WAC 392-400-820, a school district may not administer an expulsion for any student in kindergarten through fourth grade.

NEW SECTION

WAC 392-400-450 Suspensions and expulsions—Initial hearing with student. (1) **Initial hearing.** Before administering any suspension or expulsion, the principal or designee must conduct an informal initial hearing with the student for the purpose of hearing the student's perspective. At the initial hearing, the principal or designee must provide the student:

(a) Notice of the student's violation of the school district's discipline policy adopted under WAC 392-400-110;

(b) An explanation of the evidence regarding the behavioral violation;

(c) An explanation of the discipline that may be administered; and

(d) An opportunity for the student to share the student's perspective and provide explanation regarding the behavioral violation.

(2) **Parent participation.**

(a) **Short-term and in-school suspensions.** At an initial hearing in which the principal or designee is considering administering a short-term or in-school suspension, the principal or designee must provide the student an opportunity for the student to contact the student's parents.

(b) **Long-term suspensions and expulsions.** At an initial hearing in which the principal or designee is considering administering a long-term suspension or expulsion, the principal or designee must make a reasonable attempt to contact the student's parents to provide an opportunity for the parents to participate in the initial hearing in person or by telephone.

(3) **Administrative decision.** Following the initial hearing, the principal or designee must inform the student of the decision regarding the behavioral violation, including the date on which any suspension or expulsion will begin and end.

(4) **Language assistance.** The school district must ensure that the initial hearing is held in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-455 Suspensions and expulsions—Notice to student and parents. (1) **Initial notice.** Before administering any suspension or expulsion, a school district

must attempt to notify the student's parents, as soon as reasonably possible, regarding the behavioral violation.

(2) **Written notice.** No later than one school business day following the initial hearing with the student in WAC 392-400-450, a school district must provide written notice of the suspension or expulsion to the student and parents in person, by mail, or by email. The written notice must include:

(a) A description of the student's behavior and how the behavior violated the school district's policy adopted under WAC 392-400-110;

(b) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end;

(c) The other forms of discipline that the school district considered or attempted, and an explanation of the district's decision to administer the suspension or expulsion;

(d) The opportunity to receive educational services during the suspension or expulsion under WAC 392-400-610;

(e) The student's and parents' right to an informal conference with the principal or designee under WAC 392-400-460;

(f) The student's and parents' right to appeal the suspension or expulsion under WAC 392-400-465, including where and to whom the appeal must be requested; and

(g) For a long-term suspension or expulsion, the opportunity for the student and parents to participate in a reengagement meeting under WAC 392-400-710.

(3) **Language assistance.** The school district must ensure the initial and written notices required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-460 Suspensions and expulsions—Optional conference with principal. (1) **Requesting a conference.** If the student or parents disagree with the school district's decision to suspend or expel the student, the student or parents may request an informal conference with the principal or designee to resolve the disagreement. The request for an informal conference may be made orally or in writing.

(2) **Time limit.** The principal or designee must hold the conference within three school business days after receiving the request, unless otherwise agreed to by the student and parents.

(3) **Conference.** During the informal conference, the principal or designee must provide the student and parents the opportunity to:

(a) Share the student's perspective and explanation regarding the behavioral violation;

(b) Confer with the principal or designee and school personnel involved in the incident that led to the suspension or expulsion; and

(c) Discuss other forms of discipline that may be administered.

(4) **Language assistance.** The school district must ensure the conference is held in a language the student and

parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(5) **Right to appeal.** An informal conference must not limit a student's or parents' right to appeal the suspension or expulsion under WAC 392-400-465, participate in a reengagement meeting under WAC 392-400-710, or petition for readmission.

NEW SECTION

WAC 392-400-465 Suspensions and expulsions—

Appeal. (1) **Requesting an appeal.** A student or the parents may appeal a suspension or expulsion to the school district superintendent or designee orally or in writing.

(2) **Time limit.** A school district may establish a time limit to appeal a suspension or expulsion. Appeal time limits must be no less than five school business days from the date the school district provides the written notice under WAC 392-400-455.

(3) **Short-term and in-school suspensions.**

(a) **Appeal.** The superintendent or designee must provide the student and parents the opportunity to share the student's perspective and explanation regarding the behavioral violation orally or in writing.

(b) **Appeal decision.** The superintendent or designee must deliver a written appeal decision to the student and parents in person, by mail, or by email within two school business days after receiving the appeal. The written decision must include:

- (i) The decision to affirm, reverse, or modify the suspension;
- (ii) The duration and conditions of the suspension, including the dates on which the suspension will begin and end;
- (iii) The educational services the school district will offer to the student during the suspension under WAC 392-400-610; and
- (iv) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-470, including where and to whom to make the request.

(4) **Long-term suspensions and expulsions.**

(a) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent or designee must provide the student and parents written notice in person, by mail, or by email of:

- (i) The time, date, and location of the appeal hearing;
- (ii) The name(s) of the official(s) presiding over the appeal;
- (iii) The student's and parents' rights to inspect the student's education records under (e) of this subsection;
- (iv) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under (e) of this subsection;
- (v) The student's and parents' rights under (f) of this subsection; and

(vi) Whether the school district will offer to hold a reengagement meeting under WAC 392-400-710 before the appeal hearing.

(b) **Reengagement.** Before the appeal hearing, the student, parents, and school district may agree to hold a reengagement meeting and develop a reengagement plan under WAC 392-400-710. The student, parents, and school district may mutually agree to postpone the appeal hearing while participating in the reengagement process.

(c) **Appeal hearing.** The school district must hold an appeal hearing within three school business days from the date the superintendent or designee received the appeal request, unless otherwise agreed to by the student or parents.

(d) **Presiding officials.** The school board may designate the superintendent, a hearing officer, or a discipline appeal council, if established under WAC 392-400-475, to hear and decide appeals under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to suspend or expel the student and must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

(e) **Evidence and witnesses.**

(i) Upon request, the student, parents, and school district may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school district, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(ii) Upon request, the student and parents may review the student's education records. The district must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(iii) If a witness for the school district cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the district establishes that:

- (A) The district made a reasonable effort to produce the witness; and
- (B) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(f) **Student and parent rights.** During the appeal hearing, the student and parents have the right to:

- (i) Be represented by legal counsel;
- (ii) Question witnesses;
- (iii) Share the student's perspective and provide explanation regarding the behavioral violation; and
- (iv) Introduce relevant documentary, physical, or testimonial evidence.

(g) **Recording of hearing.** The appeal hearing must be recorded by manual, electronic, or other type of recording device. The school district must provide the recording to the student or parents upon request.

(h) **Appeal decision.** The presiding official(s) must base the decision solely on the evidence presented at the hearing. The presiding official(s) must provide a written decision to the student and parents in person, by mail, or by email within three school business days after the appeal hearing. The written decision must include:

- (i) The findings of fact;
- (ii) A determination whether:

(A) The student's behavior violated the school district's discipline policy adopted under WAC 392-400-110;

(B) The behavioral violation reasonably warrants the suspension or expulsion and the length of the suspension or expulsion; and

(C) The suspension or expulsion is affirmed, reversed, or modified;

(iii) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end;

(iv) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-470, including where and to whom to make the request; and

(v) Notice of the opportunity to participate in a reengagement meeting under WAC 392-400-710 and the contact information for the person who will coordinate scheduling of the reengagement meeting.

(5) **Language assistance.** The school district must ensure that the notice, appeal proceedings, and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(6) **Pending appeal.** If the student or parents request an appeal under this section, the school district may temporarily continue to administer the suspension or expulsion during the appeal period subject to the following requirements:

(a) The school district may temporarily continue to administer the suspension or expulsion for no more than ten consecutive school days from the initial hearing under WAC 392-400-450 or until the appeal is decided, whichever is earlier;

(b) Any days that the student is temporarily suspended or expelled before the appeal is decided must be applied to the term of the student's suspension or expulsion and may not extend the term of the student's suspension or expulsion;

(c) If the student who is temporarily suspended or expelled returns to school before the appeal is decided under this section, the school district must provide the student an opportunity to make up assignments and tests missed during the suspension or expulsion upon the student's return.

NEW SECTION

WAC 392-400-470 Suspensions and expulsions—Review and reconsideration. (1) **Requesting review.** The student or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the school district's appeal decision under WAC 392-400-465. The student or parents may request the review orally or in writing.

(2) **Time limit.** A school district may establish a time limit for parents and students to request a review under this section. The time limit must be no less than ten school business days from the date the school district provides the written appeal decision to the student and parents under WAC 392-400-465.

(3) **Review procedure.**

(a) In reviewing the school district's decision, the school board or discipline appeal council must consider all documentary and physical evidence related to the behavioral violation, any records from the appeal under WAC 392-400-465, relevant state law, and the school district's discipline policy adopted under WAC 392-400-110.

(b) The school board or discipline appeal council may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather additional information.

(c) The decision of the school board or discipline appeal council must be made only by board or council members who were not involved in the behavioral violation, the decision to suspend or expel the student, or the appeal decision under WAC 392-400-465. If the discipline appeal council presided over the appeal under WAC 392-400-465, the decision must be made by the school board.

(4) **Decision.** The school board or discipline appeal council must provide a written decision to the student and parents in person, by mail, or by email within ten school business days after receiving the request for review and reconsideration. The written decision must identify:

(a) Whether the school board or discipline appeal council affirms, reverses, or modifies the suspension or expulsion;

(b) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end; and

(c) For long-term suspensions or expulsions, notice of the opportunity to participate in a reengagement meeting under WAC 392-400-710.

(5) **Language assistance.** The school district must ensure that any review proceedings and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-475 Discipline appeal council. A school board may designate a discipline appeal council to hear and decide appeals under WAC 392-400-465 or to review and reconsider the district's appeal decisions under WAC 392-400-470. A discipline appeal council must consist of at least three persons appointed by the school board for fixed terms. All members of the discipline appeal council must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

NEW SECTION

WAC 392-400-480 Petition to extend expulsion. (1) **Petition.** When risk to public health or safety warrants extending a student's expulsion, the principal or designee may petition the school district superintendent or designee for authorization to exceed the academic term limitation on an expulsion. The petition must inform the superintendent or designee of:

(a) The behavioral violation that resulted in the expulsion and the public health or safety concerns;

(b) The student's academic, attendance, and discipline history;

(c) Any nonacademic supports and behavioral services the student was offered or received during the expulsion;

(d) The student's academic progress during the expulsion and the educational services available to the student during the expulsion;

(e) The proposed extended length of the expulsion; and

(f) The student's reengagement plan.

(2) **Time limit.** The principal or designee may request a petition under this section only after the development of a reengagement plan under WAC 392-400-710 and before the end of the expulsion. For violations of WAC 392-400-820, the principal or designee can request a petition at any time.

(3) **Notice.** The school district must provide written notice of the petition to the student and parents in person, by mail, or by email within one school business day from the date the superintendent or designee received the petition. The written notice must include:

(a) A copy of the petition;

(b) The student's and parents' right to an informal conference with the school district superintendent or designee to be held within five school business days from the date the district provided written notice to the student and parents; and

(c) The student's and parents' right to respond to the petition orally or in writing to the school district superintendent or designee within five school business days from the date the district provided written notice.

(4) **Written decision.** The school district superintendent or designee may grant the petition only if there is substantial evidence that, if the student were to return to the student's previous school of placement after the length of an academic term, the student would pose a risk to public health or safety. The school district superintendent or designee must deliver a written decision to the principal, the student, and the student's parents in person, by mail, or by email within ten school business days after receiving the petition.

(a) If the petition is granted, the written decision must include:

(i) The date on which the extended expulsion will end;

(ii) The reason that, if the student were to return before the initial expulsion end date, the student would pose a risk to public health or safety; and

(iii) Notice of the student's or parents' right to request review and reconsideration of the appeal decision under subsection (5) of this section, including where and to whom to make the request.

(b) If the petition is not granted, the written decision must identify the date on which the expulsion will end.

(5) **Review and reconsideration.**

(a) **Requesting review.** The students or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the decision to extend the student's expulsion. The student or parents may request the review orally or in writing.

(b) **Time limit.** A school district may establish a time limit for parents and students to request a review under this subsection. The time limit must be no less than ten school business days from the date the school district superintendent

or designee provides the written decision under subsection (4) of this section.

(c) **Review procedure.**

(i) The school board or discipline appeal council may request to meet with the student or parents or the principal to hear further arguments and gather additional information.

(ii) The decision of the school board or discipline appeal council may be made only by board or council members who were not involved in the behavioral violation, the decision to expel the student, or the appeal decision under WAC 392-400-465.

(d) **Decision.** The school board or discipline appeal council must provide a written decision to the student and parents in person, by mail, or by email within ten school business days after receiving the request for review and reconsideration. The written decision must identify:

(i) Whether the school board or discipline appeal council affirms, reverses, or modifies the decision to extend the student's expulsion; and

(ii) The date on which the extended expulsion will end.

(6) **Duration.** Any extension of an expulsion may not exceed the length of an academic term.

(7) **Language assistance.** The school district must ensure that any petition proceedings, notices, and decisions are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(8) **Annual reporting.** The school district must annually report the number of petitions approved and denied to the office of superintendent of public instruction.

EMERGENCY EXPULSIONS

NEW SECTION

WAC 392-400-510 Emergency expulsions—Conditions and limitations. A school district may immediately remove a student from the student's current school placement, subject to the following requirements:

(1) **Determination of danger.** The school district must have sufficient cause to believe that the student's presence poses an immediate and continuing danger to other students or school personnel.

(2) **Time limit.** An emergency expulsion may not exceed ten consecutive school days. An emergency expulsion must end or be converted to another form of discipline within ten school days from the start of the emergency expulsion.

(3) **Conversion.** If a school district converts an emergency expulsion to a suspension or expulsion, the district must:

(a) Apply any days that the student was emergency expelled before the conversion to the total length of the suspension or expulsion; and

(b) Provide the student and parents notice and due process under WAC 392-400-455 through 392-400-480.

(4) **Reporting.** All emergency expulsions, including the reason the student's presence poses an immediate and continuing danger to other students or school personnel, must be

reported to the district superintendent or designee within twenty-four hours after the start of the emergency expulsion.

NEW SECTION

WAC 392-400-515 Emergency expulsions—Notice to student and parents. (1) **Initial notice.** After an emergency expulsion, the school district must attempt to notify the student's parents, as soon as reasonably possible, regarding the reason the district believes the student's presence poses an immediate and continuing danger to other students or school personnel.

(2) **Written notice.** Within twenty-four hours after an emergency expulsion, a school district must provide written notice of the emergency expulsion to the student and parents in person, by mail, or by email. The written notice must include:

(a) The reason the student's presence poses an immediate and continuing danger to students or school personnel;

(b) The duration and conditions of the emergency expulsion, including the dates on which the emergency expulsion will begin and end;

(c) The opportunity to receive educational services during the emergency expulsion under WAC 392-400-610;

(d) The student's and parents' right to an informal conference with the principal or designee under WAC 392-400-520; and

(e) The student's and parents' right to appeal the emergency expulsion under WAC 392-400-525, including where and to whom the appeal must be requested.

(3) **Language assistance.** The school district must ensure the initial and written notices required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-520 Emergency expulsions—Optional conference with principal. (1) **Requesting a conference.** If a student or the parents disagree with the school district's decision to administer an emergency expulsion, the student or parents may request an informal conference with the principal or designee to resolve the disagreement. The request for an informal conference may be made orally or in writing.

(2) **Time limit.** The principal or designee must hold the conference within three school business days after receiving the request, unless otherwise agreed to by the student and parents.

(3) **Conference.** During the informal conference, the principal or designee must provide students and parents the opportunity to share the student's perspective and explanation regarding the events that led to the emergency expulsion.

(4) **Language assistance.** The school district must ensure the conference is held in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(5) **Right to appeal.** An informal conference must not limit a student's or parents' right to appeal the emergency expulsion under WAC 392-400-525.

NEW SECTION

WAC 392-400-525 Emergency expulsions—Appeal.

(1) **Requesting an appeal.** A student or the parents may appeal an emergency expulsion to the school district superintendent or designee orally or in writing.

(2) **Time limit.** A school district may establish a time limit to appeal an emergency expulsion. Appeal time limits must be no less than three school business days from the date the school district provides the written notice of the emergency expulsion.

(3) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent or designee must provide the student and parents written notice in person, by mail, or by email of:

(a) The time, date, and location of the appeal hearing;

(b) The name(s) of the official(s) presiding over the appeal;

(c) The student's and parents' rights to inspect the student's education records under subsection (6) of this section;

(d) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under subsection (6) of this section; and

(e) The student's and parents' rights under subsection (7) of this section.

(4) **Appeal hearing.** The school district must hold an appeal hearing as soon as reasonably possible, but no later than two school business days after the date the superintendent or designee received the appeal request, unless otherwise agreed to by the student and parents.

(5) **Presiding official(s).** The school board may designate the superintendent, a hearing officer, or a discipline appeal council, if established under WAC 392-400-475, to hear and decide appeals under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to emergency expel the student and must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

(6) **Evidence and witnesses.**

(a) Upon request, the student, parents, and school district may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school district, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(b) Upon request, the student and parents may review the student's education records. The school district must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(c) If a witness for the school district cannot or does not appear at the appeal hearing, the presiding official(s) may

excuse the witness's nonappearance if the district establishes that:

(i) The district made a reasonable effort to produce the witness; and

(ii) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(7) **Student and parent rights.** The student and parents have the right to:

(a) Be represented by legal counsel;

(b) Question witnesses;

(c) Share the student's perspective and provide explanation regarding the events that led to the emergency expulsion; and

(d) Introduce relevant documentary, physical, or testimonial evidence.

(8) **Recording of hearing.** The appeal hearing must be recorded by manual, electronic, or other type of recording device. The school district must provide the recording to the student or parents upon request.

(9) **Appeal decision.** The school district must provide a written decision to the student and parents in person, by mail, or by email within one school business day after the appeal hearing. The written decision must include:

(a) The findings of fact;

(b) A determination whether the student's presence continues to pose an immediate and continuing danger to students or school personnel; and

(c) Whether the school district will end the emergency expulsion or convert the emergency expulsion to a suspension or expulsion. If the school district converts the emergency expulsion to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-455 through 392-400-480; and

(d) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-530, including where and to whom to make the request.

(10) **Language assistance.** The school district must ensure that any appeal proceedings, notices, and decisions are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-530 Emergency expulsions—Review and reconsideration. (1) **Requesting review.** The student or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the school district's appeal decision under WAC 392-400-525. The student or parents may request the review orally or in writing.

(2) **Time limit.** A school district may establish a time limit for parents and students to request a review under this section. The time limit must be no less than five school business days from the date the school district provided the written appeal decision to the student and parents under WAC 392-400-525.

(3) **Review procedure.**

(a) In reviewing the school district's decision, the school board or discipline appeal council must consider all documentary and physical evidence related to the events that led to the emergency expulsion, any records from the appeal under WAC 392-400-525, relevant state law, and the district's discipline policy adopted under WAC 392-400-110.

(b) The school board or discipline appeal council may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather additional information.

(c) The decision of the school board or discipline appeal council must be made only by board or council members who were not involved in the events that led to the emergency expulsion, the decision to emergency expel the student, or the appeal decision under WAC 392-400-525. If the discipline appeal council presided over the appeal under WAC 392-400-525, the decision must be made by the school board.

(4) **Decision.** The school board or discipline appeal council must provide a written decision to the student and parents in person, by mail, or by email within five school business days after receiving the request for review and reconsideration. The written decision must identify:

(a) Whether the school board or discipline appeal council affirms or reverses the school district's decision that the student's presence posed an immediate and continuing danger to students or school personnel; and

(b) If the emergency expulsion has not yet ended or been converted, whether the school district will end the emergency expulsion or convert the emergency expulsion to a suspension or expulsion. If the school district converts the emergency expulsion to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-455 through 392-400-480.

(5) **Language assistance.** The school district must ensure that any review proceedings and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

EDUCATIONAL SERVICES

NEW SECTION

WAC 392-400-610 Educational services during suspension, expulsion, or emergency expulsion. (1) **Educational services.** During the suspension, expulsion, or emergency expulsion of a student, a school district must provide the student the opportunity to receive educational services. The educational services must be comparable, equitable, and appropriate to the regular educational services the student would have received without the suspension or expulsion.

(2) **Comparable, equitable, and appropriate services.** When determining whether educational services are comparable, equitable, and appropriate, the school district must consider how the educational services will enable the student to continue to participate in the general education curriculum so that the student can meet the educational standards estab-

lished within the district. In making the determination, the school district must consider:

(a) Meaningful input from the student, parents, and the student's teachers;

(b) Whether the student's regular educational services include English language development services, special education, accommodations and related services under Section 504 of the Rehabilitation Act of 1973, or supplemental services designed to support the student's academic achievement; and

(c) Access to any necessary technology, transportation, or resources the student needs to participate fully in the educational services.

(3) **Notice.** As soon as reasonably possible after administering a suspension or expulsion, a school district must provide written notice to the student and parents about the educational services the district will provide. The school district must provide the written notice in person, by mail, or by email. The notice must include:

(a) A description of the educational services that will be provided; and

(b) The name and contact information for the school personnel who can offer support to keep the student current with assignments and course work as required under this section.

(4) **Exclusions for up to five days.** For students subject to suspension or emergency expulsion for up to five consecutive school days, a school district must provide at least the following:

(a) Course work, including any assigned homework, from all of the student's regular subjects or classes;

(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes; and

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency expulsion.

(5) **Exclusions for six to ten days.** For students subject to suspension or emergency expulsion for six to ten consecutive school days, a school district must provide at least the following:

(a) Course work, including any assigned homework, from all of the student's regular subjects or classes;

(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes. School personnel must contact the student or parents within three school business days following the start of the suspension or emergency expulsion and periodically until the suspension or emergency expulsion ends to:

(i) Coordinate the delivery and grading of course work between the student and the student's teacher(s) at a frequency that would allow the student to keep current with assignments and course work for all of the student's regular subjects or classes; and

(ii) Communicate with the student, parents, and the student's teacher(s) about the student's academic progress.

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency expulsion.

(6) **Long-term suspensions and expulsions.** For students subject to expulsion or suspension for more than ten consecutive school days, a school district must provide educational services in accordance with WAC 392-121-107.

(7) **Language assistance.** The school district must ensure that notices and communications required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

REENGAGEMENT

NEW SECTION

WAC 392-400-710 Student reengagement after long-term suspension or expulsion. (1) Reengagement meeting.

When a school district administers a long-term suspension or expulsion, the district must convene a reengagement meeting with the student and parents to discuss a plan to reengage the student. Before convening a reengagement meeting, a school district must communicate with the student and parents to schedule the meeting time and location. The reengagement meeting must occur:

(a) Within twenty calendar days of the start of the student's long-term suspension or expulsion, but no later than five calendar days before the student returns to school; or

(b) As soon as reasonably possible, if the student or parents request a prompt reengagement meeting.

(2) **Reengagement plan.** The school district must collaborate with the student and parents to develop a culturally sensitive and culturally responsive reengagement plan tailored to the student's individual circumstances to support the student in successfully returning to school. In developing a reengagement plan, the school district must consider:

(a) The nature and circumstances of the incident that led to the student's suspension or expulsion;

(b) As appropriate, students' cultural histories and contexts, family cultural norms and values, community resources, and community and parent outreach;

(c) Shortening the length of time that the student is suspended or expelled;

(d) Providing academic and nonacademic supports that aid in the student's academic success and keep the student engaged and on track to graduate; and

(e) Supporting the student, parents, or school personnel in taking action to remedy the circumstances that resulted in the suspension or expulsion and preventing similar circumstances from recurring.

(3) **Documentation.** The school district must document the reengagement plan and provide a copy of the plan to the student and parents.

(4) **Language assistance.** The school district must ensure that the reengagement meeting and plan are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(5) **Student and parent rights.** Reengagement meetings do not replace an appeal hearing under WAC 392-400-465 or a petition for readmission.

ADDITIONAL DUE PROCESS PROTECTIONS

NEW SECTION

WAC 392-400-805 Fundamental rights. When administering discipline under this chapter, the school district must not:

(1) Unlawfully discriminate against a student on the basis of sex, race, creed, religion, color, national origin, age, veteran or military status, sexual orientation, gender expression or identity, disability, or the use of a trained dog guide or service animal;

(2) Deprive a student of the student's constitutional right to freedom of speech and press, the constitutional right to peaceably assemble and to petition the government and its representatives for a redress of grievances, the constitutional right to the free exercise of religion and to have the student's school free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising the right;

(3) Deprive a student of the student's constitutional right to be secure in the student's person, papers, and effects against unreasonable searches and seizures;

(4) Unlawfully interfere in a student's pursuit of an education while in the custody of the school district; or

(5) Deprive a student of the student's right to an equal educational opportunity, in whole or in part, by a school district without due process of law.

NEW SECTION

WAC 392-400-810 Long-term suspensions and expulsions administered by another school district. (1) A school district may continue to administer a long-term suspension or expulsion administered by another school district when the student's behavioral violation would also be a violation of the district's discipline policy adopted under WAC 392-400-110.

(2) **Procedure.** If a school district continues to administer a long-term suspension or expulsion administered by another school district under this section:

(a) The length of the long-term suspension or expulsion must not exceed the original length of the long-term suspension or expulsion administered by the other school district. The school district must apply any days the student was suspended or expelled by the other district to the total length of the suspension or expulsion; and

(b) The district must provide the student and parents notice and due process in accordance with WAC 392-400-455 through 392-400-470.

(3) **Nonresident students.** This section does not limit a school district from rejecting applications from nonresident students under RCW 28A.225.225.

NEW SECTION

WAC 392-400-815 Behavior agreements. (1) **General.** A school district may enter into behavior agreements with students and parents in response to behavioral violations, including agreements to reduce the length of a suspension conditioned on the participation in treatment services, agreements in lieu of suspension or expulsion, or agreements holding a suspension or expulsion in abeyance.

(2) **Policies and procedures.** A school district entering into behavior agreements under this section must adopt written policies and procedures authorizing the agreements.

(3) **Reengagement meetings and educational services.** A school district must ensure that a behavior agreement does not waive a student's opportunity to participate in a reengagement meeting under WAC 392-400-710, or receive educational services as provided under WAC 392-400-610.

(4) **Duration.** The duration of behavior agreements must not exceed the length of an academic term.

(5) **Subsequent behavioral violations.** Nothing in this section precludes a school district from administering discipline for behavioral violations that occur after the district enters into an agreement with the student and parents.

(6) **Language assistance.** The school district must ensure any behavior agreement under this section is provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-820 Firearm exceptions. As provided under RCW 28A.600.420:

(1) A school district must expel a student for no less than one year if the district has determined that the student has carried or possessed a firearm on school premises, school-provided transportation, or areas of facilities while being used exclusively by public schools. The school district superintendent may modify the expulsion on a case-by-case basis.

(2) A school district may suspend or expel a student for up to one year if the student acts with malice, as defined under RCW 9A.04.110, and displays an instrument that appears to be a firearm on school premises, school-provided transportation, or areas of facilities while being used exclusively by public schools.

(3) This section does not apply to:

(a) Any student while engaged in military education authorized by the school district in which rifles are used;

(b) Any student while involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by the school district in which the rifles of collectors or instructors are handled or displayed; or

(c) Any student while participating in a rifle competition authorized by the school district.

NEW SECTION

WAC 392-400-825 Corporal punishment, restraint, and isolation. (1) **Corporal punishment.** A school district may not administer corporal punishment, including any act

that willfully inflicts or willfully causes the infliction of physical pain on a student. Corporal punishment does not include:

(a) The use of reasonable physical force by a school administrator, teacher, school personnel or volunteer as necessary to maintain order or to prevent a student from harming themselves, other students, school personnel, or property;

(b) Physical pain or discomfort resulting from or caused by training for or participation in athletic competition or recreational activity voluntarily engaged in by a student; or

(c) Physical exertion shared by all students in a teacher-directed class activity, which may include, but is not limited to, physical education exercises, field trips or vocational education projects.

(2) Restraint and isolation. A school district may not use isolation, restraint, or a restraint device on any student, except as provided for in RCW 28A.155.210, 28A.600.485, WAC 392-172A-02105, and 392-172A-02110.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-400-200 Purpose and application.
- WAC 392-400-205 Definitions.
- WAC 392-400-210 Student responsibilities and duties.
- WAC 392-400-215 Student rights.
- WAC 392-400-220 Student disciplinary boards—Establishment at option of school district—Functions.
- WAC 392-400-225 School district rules defining misconduct—Distribution of rules.
- WAC 392-400-227 School district rules defining students religious rights.
- WAC 392-400-230 Persons authorized to impose discipline, suspension, expulsion, or emergency removal upon students.
- WAC 392-400-233 Unexcused absences and tardiness.
- WAC 392-400-235 Discipline—Conditions and limitations.
- WAC 392-400-240 Discipline—Grievance procedure.
- WAC 392-400-245 Short-term suspension—Conditions and limitations.
- WAC 392-400-250 Short-term suspension—Prior conference required—Notice to parent.
- WAC 392-400-255 Short-term suspension—Grievance procedure.
- WAC 392-400-260 Long-term suspension—Conditions and limitations.
- WAC 392-400-265 Long-term suspension—Notice of hearing—Waiver of hearing.
- WAC 392-400-270 Long-term suspension—Prehearing and hearing process.

- WAC 392-400-275 Expulsion—Conditions and limitations.
- WAC 392-400-280 Expulsion—Notice of hearing—Waiver of hearing.
- WAC 392-400-285 Expulsion—Prehearing and hearing process.
- WAC 392-400-290 Emergency removal from a class, subject, or activity.
- WAC 392-400-295 Emergency expulsion—Limitations.
- WAC 392-400-300 Emergency expulsion—Notice of hearing—Waiver of hearing right.
- WAC 392-400-305 Emergency expulsion—Prehearing and hearing process.
- WAC 392-400-310 Appeals—Long-term suspension and expulsion.
- WAC 392-400-315 Appeals—Hearing before school board or disciplinary appeal council—Procedures.
- WAC 392-400-317 Appeals—Discipline and short-term suspension grievances.
- WAC 392-400-320 School board or disciplinary appeal council decisions.
- WAC 392-400-410 Appeal for extension of an expulsion.
- WAC 392-400-420 Reengagement meetings and plans.

WSR 18-07-041

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 13, 2018, 3:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-134.

Title of Rule and Other Identifying Information: WAC 182-535-1084 Dental-related services—Covered—Restorative services.

Hearing Location(s): On April 24, 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 April 26, 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 April 24, 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 April 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is

revising WAC 182-535-1084 to (1) allow for payment of silver diamine fluoride as a topical preventative agent in lieu of the topical fluoride treatment; (2) clarify that the coverage policy for silver diamine fluoride is per tooth not to exceed six teeth per visit in a twelve-month period; and (3) clarify that silver diamine fluoride cannot be performed and billed with interim therapeutic restoration on the same tooth when arresting caries or as a preventive agent.

Reasons Supporting Proposal: This revision aligns with the department of health's (DOH) decision to designate silver diamine fluoride as a topical preventative agent in lieu of the topical fluoride treatment and DOH's confirmation that silver diamine fluoride is within the scope of practice for dental hygienists working under RCW 18.29.056.

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: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Ruth Needham, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9967.

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. This change aligns with DOH's decision and allows for coverage of silver diamine fluoride to be used as a topical preventative agent in lieu of the topical fluoride treatment. This change has no cost impact on businesses.

March 13, 2018

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

WAC 182-535-1084 Dental-related services—Covered—Restorative services. Clients described in WAC 182-535-1060 are eligible for the dental-related restorative services listed in this section, subject to coverage limitations, restrictions, and client age requirements identified for a specific service.

(1) **Amalgam and resin restorations for primary and permanent teeth.** The medicaid agency considers:

(a) Tooth preparation, acid etching, all adhesives (including bonding agents), liners and bases, indirect and direct pulp capping, polishing, and curing as part of the restoration.

(b) Occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the restoration.

(c) Restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

(2) **Limitations for all restorations.** The agency:

(a) Considers multiple restoration involving the proximal and occlusal surfaces of the same tooth as a multisurface restoration, and limits reimbursement to a single multisurface restoration.

(b) Considers multiple restorative resins, flowable composite resins, or resin-based composites for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one-surface restoration.

(c) Considers multiple restorations of fissures and grooves of the occlusal surface of the same tooth as a one-surface restoration.

(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the dentinoenamel junction (DEJ) to be sealants. (See WAC 182-535-1082 for sealant coverage.)

(e) Reimburses proximal restorations that do not involve the incisal angle on anterior teeth as a two-surface restoration.

(f) Covers only one buccal and one lingual surface per tooth. The agency reimburses buccal or lingual restorations, regardless of size or extension, as a one-surface restoration.

(g) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial or distal) when performed on posterior teeth or the incisal surface of anterior teeth.

(h) Does not pay for replacement restorations within a two-year period unless the restoration is cracked or broken or has an additional adjoining carious surface. The agency pays for the replacement restoration as one multisurface restoration. The client's record must include X rays or documentation supporting the medical necessity for the replacement restoration.

(3) **Additional limitations for restorations on primary teeth.** The agency covers:

(a) A maximum of two surfaces for a primary first molar. (See subsection (6) of this section for a primary first molar that requires a restoration with three or more surfaces.) The agency does not pay for additional restorations on the same tooth.

(b) A maximum of three surfaces for a primary second molar. (See subsection (6) of this section for a primary posterior tooth that requires a restoration with four or more surfaces.) The agency does not pay for additional restorations on the same tooth.

(c) A maximum of three surfaces for a primary anterior tooth. (See subsection (6) of this section for a primary anterior tooth that requires a restoration with four or more surfaces.) The agency does not pay for additional restorations on the same tooth after three surfaces.

(4) **Additional limitations for restorations on permanent teeth.** The agency covers:

(a) Two occlusal restorations for the upper molars on teeth one, two, three, fourteen, fifteen, and sixteen if, the restorations are anatomically separated by sound tooth structure.

(b) A maximum of five surfaces per tooth for permanent posterior teeth, except for upper molars. The agency allows a

maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen.

(c) A maximum of six surfaces per tooth for resin-based composite restorations for permanent anterior teeth.

(5) **Crowns.** The agency:

(a) Covers the following indirect crowns once every five years, per tooth, for permanent anterior teeth for clients age fifteen through twenty when the crowns meet prior authorization criteria in WAC 182-535-1220 and the provider follows the prior authorization requirements in (c) of this subsection:

(i) Porcelain/ceramic crowns to include all porcelains, glasses, glass-ceramic, and porcelain fused to metal crowns; and

(ii) Resin crowns and resin metal crowns to include any resin-based composite, fiber, or ceramic reinforced polymer compound.

(b) Considers the following to be included in the payment for a crown:

(i) Tooth and soft tissue preparation;

(ii) Amalgam and resin-based composite restoration, or any other restorative material placed within six months of the crown preparation. Exception: The agency covers a one-surface restoration on an endodontically treated tooth, or a core buildup or cast post and core;

(iii) Temporaries, including but not limited to, temporary restoration, temporary crown, provisional crown, temporary prefabricated stainless steel crown, ion crown, or acrylic crown;

(iv) Packing cord placement and removal;

(v) Diagnostic or final impressions;

(vi) Crown seating (placement), including cementing and insulating bases;

(vii) Occlusal adjustment of crown or opposing tooth or teeth; and

(viii) Local anesthesia.

(c) Requires the provider to submit the following with each prior authorization request:

(i) Radiographs to assess all remaining teeth;

(ii) Documentation and identification of all missing teeth;

(iii) Caries diagnosis and treatment plan for all remaining teeth, including a caries control plan for clients with rampant caries;

(iv) Pre- and post-endodontic treatment radiographs for requests on endodontically treated teeth; and

(v) Documentation supporting a five-year prognosis that the client will retain the tooth or crown if the tooth is crowned.

(d) Requires a provider to bill for a crown only after delivery and seating of the crown, not at the impression date.

(6) **Other restorative services.** The agency covers the following restorative services:

(a) All recementations of permanent indirect crowns.

(b) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, resin-based composite crowns (direct), prefabricated esthetic coated stainless steel crowns, and prefabricated resin crowns for primary anterior teeth once every three years only for clients age twenty and younger as follows:

(i) For age twelve and younger without prior authorization if the tooth requires a four or more surface restoration; and

(ii) For age thirteen through twenty with prior authorization.

(c) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, resin-based composite crowns (direct), prefabricated esthetic coated stainless steel crowns, and prefabricated resin crowns, for primary posterior teeth once every three years without prior authorization if:

(i) Decay involves three or more surfaces for a primary first molar;

(ii) Decay involves four or more surfaces for a primary second molar; or

(iii) The tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, and prefabricated resin crowns, for permanent posterior teeth excluding one, sixteen, seventeen, and thirty-two once every three years, for clients age twenty and younger, without prior authorization.

(e) Prefabricated stainless steel crowns for clients of the developmental disabilities administration of the department of social and health services (DSHS) without prior authorization according to WAC 182-535-1099.

(f) Core buildup, including pins, only on permanent teeth, only for clients age twenty and younger, and only allowed in conjunction with crowns and when prior authorized. For indirect crowns, prior authorization must be obtained from the agency at the same time as the crown. Providers must submit pre- and post-endodontic treatment radiographs to the agency with the authorization request for endodontically treated teeth.

(g) Cast post and core or prefabricated post and core, only on permanent teeth, only for clients age twenty and younger, and only when in conjunction with a crown and when prior authorized.

(7) **Silver diamine fluoride.** The agency covers silver diamine fluoride (~~(per application)~~), as follows:

(a) Allowed only when used (for stopping the progression of caries only);

(i) For stopping the progression of caries; or

(ii) As a topical preventative agent in lieu of the topical fluoride treatment found in WAC 182-535-1082(2).

(b) ~~((May be provided))~~ Allowed two times per client, per tooth. Not to exceed six teeth per visit in a twelve-month period~~((and))~~.

(c) Cannot be performed and billed with interim therapeutic restoration on the same tooth when arresting caries or as a preventive agent.

WSR 18-07-043

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed March 13, 2018, 3:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-173.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-27-0090 What information must the department or child placing agency provide to prospective adoptive parents about the child that is being considered for adoption?

Hearing Location(s): On April 24, 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 April 25, 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., April 24, 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.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is being amended to clarify the documents needed to comply with RCW 26.33.350 and 26.33.380. These amendments also eliminate the duplication of information in regards to court report documents.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 74.13.031.

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: Debbie Marker, P.O. Box 45710, Olympia, WA 98504, 360-902-7968.

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 under RCW 34.05.328 (5)(b)(iii), rules adopted by reference without material change to ensure the WAC are consistent with state requirements. The rule content is 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.

March 12, 2018
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-08-047, filed 3/30/01, effective 4/30/01)

WAC 388-27-0090 What information must the department or child placing agency provide to prospective adoptive parents about the child that is being consid-

ered for adoption? (1) The department or the child placing agency must provide a medical report containing all known and available information concerning the mental, physical, and sensory handicaps of an adopted child, or a child placed for adoption, to the adoptive or prospective adoptive parents under the authority of RCW 26.33.020, 26.33.340, 26.33.343 and 26.33.350.

(2) The department or the child placing agency worker must provide the child's medical and family background report, DSHS 13-041(X), to the prospective adoptive parents. This report must include documentation of efforts made to obtain medical and social information on the child and birth parents.

(3) The department must provide a social history report on the child and birth family that includes, at a minimum in accordance with RCW 26.33.380:

(a) Circumstances of the child's birth including all child medical records known and available to the department;

(b) All case notes from the child's file to provide a chronological report of how the child came to be available for adoption;

(c) The child's placement and legal history;

(d) ((A#)) The dependency fact finding court report and the latest court reports pertaining to the dependency and custody of the child at time of pre-adoption disclosure;

(e) The child's education history, including school reports and records known and available to the department; and

(f) The child's psychological and psychiatric reports and recommendations known and available to the department.

WSR 18-07-049

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed March 14, 2018, 12:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-18-083.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-845-0001 Definitions, 388-845-0110 Are there limitations to the waiver services you can receive?, 388-845-0210 What is the scope of services for the basic plus waiver?, 388-845-0215 What is the scope of services for the core waiver?, 388-845-0220 What is the scope of services for the community protection waiver?, 388-845-0225 What is the scope of services for the children's intensive in-home behavioral support (CIIBS) waiver?, 388-845-0230 What is the scope of services for the individual and family services (IFS) waiver?, 388-845-0420 Who is a qualified provider of assistive technology?, 388-845-0425 Are there limits to the assistive technology you can receive?, 388-845-0500 What is behavior support and consultation?, 388-845-0501 What is included in behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?, 388-845-0505 Who is a qualified provider

of behavior support and consultation?, 388-845-0506 Who is a qualified provider of behavior support and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?, 388-845-0510 Are there limits to the behavior support and consultation you can receive?, 388-845-0603 Who is eligible to receive community access services?, 388-845-0660 Are there limitations to the community engagement services you can receive?, 388-845-0700 What is a community guide service?, 388-845-0705 Who is a qualified community guide?, 388-845-0710 Are there limitations to the community guide services I can receive?, 388-845-0760 Are there limitations to community transition services I can receive?, 388-845-0800 What is emergency assistance?, 388-845-0820 Are there limits to your use of emergency assistance?, 388-845-0900 What are environmental adaptations?, 388-845-0910 What limitations apply to environmental adaptations?, 388-845-1150 What are behavioral health stabilization services?, 388-845-1600 What is respite care?, 388-845-1615 Who may be qualified providers of respite care?, 388-845-1620 Are there limits to the respite care you can receive?, 388-845-1650 What are sexual deviancy evaluations?, 388-845-1655 Who is a qualified provider of sexual deviancy evaluations?, 388-845-1660 Are there limitations to the sexual deviancy evaluations you can receive?, 388-845-1700 What is skilled nursing?, 388-845-1710 Are there limitations to the skilled nursing services you can receive?, 388-845-1810 Are there limitations to your receipt of specialized medical equipment and supplies?, 388-845-1865 Are there limitations to your receipt of specialized clothing?, 388-845-1900 What are specialized psychiatric services?, 388-845-2000 What is staff/family consultation and training?, 388-845-2010 Are there limitations to the staff/family consultation and training you can receive?, 388-845-2170 Are there limitations on your receipt of therapeutic equipment and supplies?, and 388-845-3070 What happens if you do not sign your person-centered service plan/individual support plan (ISP)?

The department is proposing to create WAC 388-845-0515 What is chemical extermination of bedbugs?, 388-845-0520 Who are qualified providers of chemical extermination of bedbugs?, 388-845-0525 Are there limits to the chemical extermination of bedbugs services I may receive?, 388-845-1181 What is occupational therapy?, 388-845-1182 Who may be a qualified provider of occupational therapy?, 388-845-1183 Are there limits to occupational therapy?, 388-845-1315 What is physical therapy?, 388-845-1316 Who may be a qualified provider of physical therapy?, 388-845-1317 Are there limits to physical therapy?, 388-845-1915 What are speech, hearing, and language services?, 388-845-1916 Who may be a qualified provider of speech, hearing, and language services?, and 388-845-1917 Are there limits to the speech, hearing, and language services you may receive?

The department is proposing to repeal WAC 388-845-1000 What are extended state plan services?, 388-845-1010 Who is a qualified provider of extended state plan services?, 388-845-1015 Are there limits to the extended state plan services you may receive?, 388-845-1200 What are person-to-person services?, 388-845-1205 Who are qualified providers of person-to-person services?, 388-845-1210 Are there limits to the person-to-person service I can receive?, 388-845-1840 What is specialized nutrition?, 388-845-1845 Who are quali-

fied providers of specialized nutrition?, and 388-845-1850 Are there limitations to your receipt of specialized nutrition?

Hearing Location(s): On May 22, 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 May 23, 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., May 22, 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 May 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules align developmental disabilities administration's (DDA) administrative rules with the waiver application approved by the Centers for Medicare and Medicaid Services (CMS). Other amendments clarify language and update policy.

Reasons Supporting Proposal: The proposed rules are necessary to provide services approved by CMS and for DDA to receive federal financial participation. Additionally, DDA must not authorize waiver services unless they are part of a waiver application approved by CMS; aligning the rules with the approved application maintains client access to waiver services.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.120, 42 C.F.R. 441 Subpart G.

Rule is necessary because of federal law, 42 C.F.R. 441 Subpart G.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Ann Whitehall, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1551.

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 Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

March 12, 2018
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 18-09 issue of the Register.

WSR 18-07-059
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed March 15, 2018, 2:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-066.

Title of Rule and Other Identifying Information: WAC 182-526-0284 Orders of default and 182-526-0285 Orders of dismissal.

Hearing Location(s): On April 24, 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 <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than April 25, 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 April 24, 2018.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.loughheed@hca.wa.gov, by April 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising WAC 182-526-0284 to (1) clarify that the notice of default includes a notice of inquiry, (2) add that an order of default becomes a final order by operation of law, (3) if an appellant fails to appear at a prehearing conference scheduled to address the petition to vacate, the order of default becomes a final order, and (4) the appellant may seek judicial review of a final order of default to the superior court.

The agency is revising WAC 182-526-0285 to (1) add that an order of dismissal becomes a final order by operation of law, (2) if an appellant fails to appear at a prehearing conference scheduled to address the petition to vacate, the order of dismissal becomes a final order, and (3) add that the appellant may seek judicial review of a final order of dismissal to the superior court.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 42 C.F.R. Part 431, Subpart E - Fair Hearings for Applicants and Beneficiaries.

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: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Evelyn

Cantrell, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9970.

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(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.

March 15, 2018

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0284 Orders of default. (1) An order of default may be entered when the appellant fails to attend a scheduled prehearing conference or hearing. The order of default will include ~~((a))~~ a notice of inquiry as to whether the appellant wants to petition to reinstate the hearing.

(2) The appellant may file a petition to vacate an order of default under WAC 182-526-0290.

(3) An order of default becomes a final order ~~((dismissing))~~ by operation of law, disposing of the appellant's request for a hearing under RCW 34.05.440 if:

(a) The appellant does not file a petition to vacate within twenty-one calendar days of the order being served (mailed) on the parties under WAC 182-526-0290 (2) and (5)(b); or

(b) If the appellant fails to appear at a prehearing conference scheduled to address the petition to vacate under WAC 182-526-0290 (3) and (4)(a).

(4) The health care authority or managed care organization action stands after an order of default becomes a final order.

(5) The appellant may seek judicial review of a final order of default to the superior court under WAC 182-526-0640.

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

WAC 182-526-0285 Orders of dismissal. (1) An order of dismissal may be entered when the appellant withdraws the request for hearing under WAC 182-526-0115.

(2) An appellant may file a petition (request) to vacate an order of dismissal under WAC 182-526-0290.

(3) An order of dismissal becomes a final order ~~((if))~~ by operation of law, disposing of the appellant's request for a hearing under RCW 34.05.440 if:

(a) The appellant does not file a petition to vacate the order within twenty-one calendar days of the order being

served (mailed) on the parties under WAC 182-526-0290 (2) and (5)(b); or

(b) The appellant fails to appear at a prehearing conference scheduled to address the petition to vacate under WAC 182-526-0290 (3) and (4)(a).

(4) The health care authority or managed care organization action stands after an order of dismissal becomes a final order.

(5) The appellant may seek judicial review of a final order of dismissal to the superior court under WAC 182-526-0640.

WSR 18-07-060
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed March 15, 2018, 3:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-22-109.

Title of Rule and Other Identifying Information: WAC 182-503-0005 Washington apple health—How to apply.

Hearing Location(s): On April 24, 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 <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: April 25, 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 April 24, 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 April 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to include tailored supports for older adults (TSOA) in subsection (5). The agency is also amending the rules to clarify both who may apply and language regarding the application process for these programs, and to update a web site. In addition, the agency added a new subsection (11) to make it clear that authorized representatives may apply on an applicant's behalf.

Reasons Supporting Proposal: See purpose above.

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: Aranzazu Granrose, P.O. Box 42684, Olympia, WA 98504-2684, 360-725-1390.

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. This rule does not impose any costs on businesses.

March 15, 2018
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-15-061, filed 7/13/17, effective 8/13/17)

WAC 182-503-0005 Washington apple health—How to apply. (1) You may apply for Washington apple health at any time.

(2) For apple health programs for children, pregnant people, parents and caretaker relatives, and adults age sixty-four and under without medicare (~~(, parents and caretaker relatives (modified adjusted gross income (MAGI)):~~

~~(a)) (including people who have a disability or are blind), you may apply:~~

~~((i)) (a) Online via the Washington Healthplanfinder at ((<http://www.wahealthplanfinder.org>)) www.wahealthplanfinder.org;~~

~~((ii)) (b) By calling the Washington Healthplanfinder customer support center ((number)) and completing an application by telephone;~~

~~((iii)) (c) By completing the application for health care coverage (HCA 18-001P), and mailing or faxing to Washington Healthplanfinder; or~~

~~((iv) Through) (d) At a department of social and health services (DSHS) community services office (CSO).~~

~~((b) If you need help filing a MAGI-based apple health application, you may:~~

~~(i) Contact the Washington Healthplanfinder customer support center number listed on the application for health care coverage form (HCA 18-001P); or~~

~~(ii) Contact a navigator, health care authority community assistor, or broker.)~~

(3) If you seek apple health ~~((and have a disability or are blind, age sixty-five or older, eligible for medicare, or need long-term services and supports (non-MAGI)))~~ coverage and are age sixty-five or older, have a disability, are blind, need assistance with medicare costs, or seek coverage of long-term services and supports, you may apply:

(a) Online via Washington Connection at ~~((<http://www.WashingtonConnection.org>))~~ www.WashingtonConnection.org;

(b) By completing the application for aged, blind, disabled/long-term care coverage (HCA 18-005) and mailing or faxing to DSHS; or

(c) In person at a local DSHS CSO or home and community services (HCS) office.

(4) ~~((For apple health that is not based on MAGI, you may apply if you are:~~

~~(a) Age sixty-five or older;~~
~~(b) Eligible for medicare;~~
~~(c) Applying for health care based on blindness or disability;~~
~~(d) Applying for long-term services and supports; or~~
~~(e) Applying for assistance with medicare premiums.~~
~~(5)) You may receive help filing an application ((by:~~
~~(a) Visiting));~~
(a) For household containing people described in subsection (2) of this section:

(i) Call the Washington Healthplanfinder customer support center number listed on the application for health care coverage form (HCA 18-001P); or

(ii) Contact a navigator, health care authority volunteer assistant, or broker.

(b) For people described in subsection (3) of this section who are not applying with a household containing people described in subsection (2) of this section:

(i) Call or visit a local DSHS CSO or HCS office; or ((b) Calling)) (ii) Call the DSHS community services customer service contact center number listed on the medic-aid application form.

(5) To apply for tailored supports for older adults (TSOA), see WAC 182-513-1625.

(6) You must apply directly with the service provider for the following programs:

(a) The breast and cervical cancer treatment program under WAC 182-505-0120;

(b) The TAKE CHARGE program under chapter 182-532 WAC; and

(c) The kidney disease program under chapter 182-540 WAC.

(7) For the confidential pregnant minor program under WAC 182-505-0117 and for minors living independently, you must complete a separate application directly with us (the medicaid agency).

(8) More information on how to give us an application may be found at the agency's web site: ((http://www.hca.wa.gov)) www.hca.wa.gov/free-or-low-cost-health-care.

~~((8))~~ (9) As the primary applicant or head of household, you may start an application for apple health by(=

~~(a))~~ providing your:

~~((i))~~ (a) Full name;

~~((ii))~~ (b) Date of birth; ((and

~~((iii))~~ (c) Physical address, and mailing addresses (if different)((=

~~(b) Signing the application)); and~~

~~(d) Signature.~~

~~((9))~~ (10) To complete an application for apple health, you must also give us all of the other information requested on the application.

~~((10))~~ (11) You may have an authorized representative apply on your behalf as described in WAC 182-503-0130.

(12) We help you with your application or renewal for apple health in a manner that is accessible to you if you:

(a) Are a person with disabilities, impairments, or other limitations and ~~((may need))~~ choose equal access services as described in WAC 182-503-0120; or

(b) Have limited-English proficiency as described in WAC 182-503-0110.

WSR 18-07-066

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed March 16, 2018, 9:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-151.

Title of Rule and Other Identifying Information: WAC 308-408C-020 Ethics—Statement of purpose.

Hearing Location(s): On April 25, 2018, at 10:00 a.m., at the Capital Event Center, Room Chehalis B, 6005 Tyee Drive S.W., Tumwater, WA 98512. For directions, visit www.esd113.org/Page/573.

Date of Intended Adoption: April 26, 2018.

Submit Written Comments to: Lynn Briscoe, Department of Licensing, Home Inspector Program, P.O. Box 9021, Olympia, WA 98507-9021, email lbriscoe@dol.wa.gov, 360-664-1399, by April 25, 2018, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Lona Price, phone 360-664-6482, TTY 711, email loprice@dol.wa.gov, by April 24, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- Clarify disclosure requirements when any relationship or other conflict of interest exists between the home inspector and other parties to the transaction;
- Prohibit the ability to offer an inducement in exchange for performing a home inspection. (Within the industry, this activity is commonly referred to as "pay for play"); and
- Remove language that causes regulation of a licensee's marketing, advertising, or promotional practices.

Reasons Supporting Proposal: The proposal removes any contradictory language and clarifies written disclosure to ensure consumer protection and the consumer's right to freely pick a home inspector. The proposal also balances between prohibiting the industry to develop an environment that allows compensation or reward for referrals or inclusion on a preferred list, while removing language that regulates a licensee's marketing, advertising, or promotional activities.

Statutory Authority for Adoption: RCW 18.280.050 and 18.280.060.

Statute Being Implemented: Chapter 18.280 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lynn Briscoe, 2000 4th Avenue West, Olympia, WA 98502, 360-664-1399.

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 department of licensing is exempt under RCW 24.05.328 [34.05.328] (5)(a).

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

Is exempt under RCW 19.85.020(3).

Explanation of exemptions: This rule affects only individual applicants or licensees.

March 16, 2018
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-08-014, filed 3/20/09, effective 4/20/09)

WAC 308-408C-020 Ethics—Statement of purpose.

In order to ensure the integrity and high standard of skill and practice in the home inspection profession, the following rules of conduct and ethics shall be binding upon the inspector.

The home inspector must:

(1) Provide home inspection services that conform to the Washington state home inspectors' SOP.

(2) Provide full written disclosure, to the home inspector's client, of any business ((or)), familial, or financial relationships or other conflicts of interest between ((themselves)) the home inspector and any other party to the transaction. Written disclosure is required prior to the client's signing of the preinspection agreement. Disclosure is required to ensure the consumer's right to freely pick a home inspector of the buyer's or seller's choice and prevent collusion between the home inspector and the parties to the transaction. Parties may include, but are not limited to, buyers, sellers, appraisers, real estate licensees, mortgage representatives, title companies, vendors and service contractors.

(3) Act as an unbiased party and discharge his or her duties with integrity and fidelity to the client.

(4) Perform services and express opinions based on genuine conviction and only within the inspector's area of education, training, or expertise.

(5) Not conduct a home inspection or prepare a home inspection report that knowingly minimizes, compromises or attempts to balance information about defects for the purpose of garnering future referrals.

(6) Not provide services that constitute the unauthorized practice of any profession that requires a special license when the inspector does not hold that license.

(7) Not accept compensation for a home inspection from more than one party without written disclosure to the inspector's client(s).

(8) Not for one year after completion of the inspection repair, replace, or upgrade for compensation components or systems on any building inspected - This section applies to the inspector's firm and other employees or principals of that firm or affiliated firms.

(9) ~~((Not provide compensation, inducement, or reward directly or indirectly, to any person or entity other than the client, for the referral of business, inclusion on a list of recommended inspectors or preferred providers or participate in~~

~~similar arrangements. The purchase and/or use of low-value advertising or marketing services or products that does not exceed ten dollars per item, is not considered inducement or reward.))~~ Not offer an inducement to any individual or entity by providing compensation or reward in exchange for performing an inspection.

(10) Not disclose information contained in the inspection report without client approval or as required by law. However, at their discretion inspectors may disclose when practical observed safety or health hazards to occupants or others that are exposed to such hazards.

(11) Not advertise previous experience in an associated trade as experience in the home inspection profession. An inspector's advertised inspection experience will reflect only the inspector's experience as a home inspector and inspectors shall not advertise, market or promote their home inspection services or qualifications in a fraudulent, false, deceptive or misleading manner.

(12) Not accept a home inspection referral or perform a home inspection when assignment of the inspection is contingent upon the inspector reporting predetermined conditions.

WSR 18-07-070

PROPOSED RULES

CASCADIA COLLEGE

[Filed March 16, 2018, 11:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-127.

Title of Rule and Other Identifying Information: Access to public records, chapter 132Z-276 WAC.

Hearing Location(s): On April 27, 2018, at 1:30 p.m., at Cascadia College, 18345 Campus Way N.E., Room CC-1250, Bothell, WA 98011.

Date of Intended Adoption: May 16, 2018.

Submit Written Comments to: Vicki L. Newton, Rules Coordinator, Office of the President, Cascadia College, 18345 Campus Way N.E., Bothell, WA 98011, email vnewton@cascadia.edu, fax 425-352-8313, by April 27, 2018.

Assistance for Persons with Disabilities: Contact Gordon Dutrisac, phone 425-352-8288, email gdutrisac@cascadia.edu, by April 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed to update, clarify, and streamline procedures governing access to public records of the college, as well as to incorporate recent amendments to the Public Records Act, chapter 42.56 RCW.

Statutory Authority for Adoption: RCW 28B.50.140 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: Cascadia College, public and governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Vicki L. Newton, CC2-281, 425-352-8252.

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 rules are not "significant legislative rules" as defined 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.

March 16, 2018
Vicki L. Newton
Executive Assistant
to the President
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-07-091, filed 3/17/15, effective 4/17/15)

WAC 132Z-276-010 Purpose. The purpose of this chapter is to ~~((ensure that))~~ provide for public access to existing, identifiable, nonexempt public records of Cascadia College ((complies with the provisions of chapter 42.56 RCW and in particular with those sections of that chapter dealing with public records)) in accordance with the Public Records Act, chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 15-07-091, filed 3/17/15, effective 4/17/15)

WAC 132Z-276-020 Definitions. (1) **Public record.** The term "public record" ((includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics)) and other terms defined in the Public Records Act shall have the same meaning in this chapter that they have under the Public Records Act.

(2) ~~((("Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds or symbols, combination thereof and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, disks, flash drives, drums and other documents.~~

~~((3) "Cascadia College" is an agency organized by statute pursuant to RCW 28B.50.040. Cascadia College shall hereaf-~~

~~ter be referred to as the "district." Where appropriate, the term "district" also refers to the staff and employees of the district.)) **Public Records Act.** References in this chapter to the "Public Records Act" are to chapter 42.56 RCW.~~

~~((3) **Requestor.** A "requestor" is any person or entity requesting public records of the college pursuant to the Public Records Act.~~

~~((4) **College.** The term "college" means Cascadia College District No. 30.~~

AMENDATORY SECTION (Amending WSR 15-07-091, filed 3/17/15, effective 4/17/15)

WAC 132Z-276-030 Description of ~~((central and field organization of Cascadia)) the college ((District No. 30)).~~ (1) **Mission - Governance.** Cascadia College is a ((state agency)) public institution of higher education established ((and organized)) under ((the authority of)) chapter 28B.50 RCW ((for the purpose of implementing the educational goals established by the legislature in RCW 28B.50-020. The administrative office of the district is located on the college campus within the county of King, Washington. The college campus likewise comprises the central headquarters for all operations of the district.

~~((2) The district is operated under the supervision and control of a board of trustees. The board of trustees consists of five members appointed by the governor. The board of trustees normally meets at least once each month, as provided in WAC 132Z-104-010. The board of trustees employs a president, an administrative staff, instructors, and other employees. The board of trustees takes such actions and promulgates such rules, and policies in harmony with the rules established by the state board for community and technical colleges, as are necessary to the administration and operation of the district.~~

~~((3) The president of the district is responsible to the board of trustees for the operation and administration of the district)) as a community college offering academic and professional programs leading to the associate and applied baccalaureate degrees. The college is governed by a board of trustees appointed by the governor. The board appoints a president who serves as the chief executive officer responsible for the administration of the college.~~

~~((2) **College campus.** The campus of Cascadia College is located at 18345 Campus Way N.E., Bothell, Washington 98911. The college is collocated with the Bothell campus of the University of Washington. Cascadia College District No. 30 encompasses the boundaries of the common school districts of Lake Washington and Riverview in King county and Northshore in King and Snohomish counties.~~

~~((3) **Policies and procedures.** College policies meeting the definition of a "rule" under the Administrative Procedure Act, chapter 34.05 RCW, are adopted by the board of trustees and published in Title 132Z of the Washington Administrative Code (WAC). Other college policies approved by the administration are published in college policies and procedures manuals.~~

~~((4) **Documents index.** As an institution of higher education, the college generally does not have occasion to issue nonexempt "final orders," "declaratory orders," "interpretive~~

statements," or "policy statements" as those terms are defined and used in the Public Records Act. The secretary of the college's board of trustees does maintain and publish on the college web site a documents index of the board's approved meeting agendas and minutes. Inquiries may be directed to the secretary of the board in the office of the president.

(5) **College web site.** The college's official web site, available at www.cascadia.edu, provides general information about the college and its governing board, administration, educational programs, and policies and procedures. Persons seeking public records of the college are encouraged to view the records available on the web site prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 96-14-098, filed 7/2/96, effective 8/2/96)

WAC 132Z-276-040 (~~Operations and procedures.~~) **Public records officer.** ((Formal decision-making procedures are established by the board of trustees through rules promulgated in accordance with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.)) (1) **Designation.** A public records officer designated by the college shall be responsible for responding to public records requests in accordance with the provisions of this chapter and applicable provisions of the Public Records Act, chapter 42.56 RCW. The duties of the public records officer under this chapter may be delegated to one or more public records assistants designated by the college.

(2) **Duties.** The public records officer shall oversee the college's compliance with the Public Records Act. The records officer (or designee) and the college are responsible for providing the fullest assistance to requestors of public records, for ensuring that public records are protected from damage or disorganization, and for preventing records requests from excessively interfering with essential institutional functions or unreasonably disrupting the operations of the college. The college may take reasonable precautions to prevent a requestor from being unreasonably disruptive or disrespectful to college staff.

(3) **Records office.** Inquiries regarding public records of the college may be addressed to the public records officer at the following office address:

Public Records Officer
Cascadia College
18345 Campus Way N.E.
Bothell, WA 98011
425-352-8810
publicrecords@cascadia.edu

(4) **Office hours.** The regular office hours of the public records office are from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 15-07-091, filed 3/17/15, effective 4/17/15)

WAC 132Z-276-050 Requests for public records (~~available~~). ((All public records of the district, as defined in

this chapter, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by chapter 42.56 RCW or other statutes.)) (1) **Written requests preferred.** Requests for public records of the college may be addressed to the public records officer at the address given in WAC 132Z-276-040. The college encourages, but does not require, requestors to use the public records request form made available by the public records office on the college web site (www.cascadia.edu/publicrecords). Requests made orally, whether by phone or in person, may be confirmed in writing by the public records officer.

(2) **Contents of records requests.** A request for public records must include the following information:

(a) The name and contact information of the person requesting the records;

(b) The requestor's mailing address, which may be an electronic mail address;

(c) The date and time of the request;

(d) A description of the requested records that is sufficiently detailed to enable the public records officer to identify and locate the records; and

(e) A statement indicating whether the requestor wishes to inspect the records or to receive copies of the records in paper or electronic form.

(3) **Lists of individuals for commercial purposes.** State agencies and institutions are not permitted to provide lists of individuals for commercial purposes. A request for lists of individuals must be accompanied by the requestor's signed declaration that the list will not be used for commercial purposes. The public records officer may inquire as to the requestor's intended use of the list and may deny the request if it is evident from the request that the list will be used for a commercial purpose.

(4) **Assistance in identifying records.** The public records officer may assist requestors in identifying the specific records sought by the requestor. With limited exceptions, a requestor may not be required to state the purpose of the request. However, the records officer may ask the purpose of the request if such inquiry will assist in identifying the records requested.

AMENDATORY SECTION (Amending WSR 15-07-091, filed 3/17/15, effective 4/17/15)

WAC 132Z-276-060 (~~Public~~) Processing of records (~~officer~~) requests. ((The district's public records shall be in the charge of the public records officer designated by the chief administrative officer of the district. The person so designated shall be located in the district administrative office. The public records officer shall be responsible for the following: Implementation of the district's rules regarding release of public records, coordinating district employees in this regard, and generally ensuring compliance by district employees with the public records disclosure requirements in chapter 42.56 RCW.)) (1) **Applicable law.** Requests for public records will be processed in accordance with these rules and applicable provisions of the Public Records Act, chapter 42.56 RCW. Guidance concerning the application of these

rules may be found in the advisory model rules adopted by the attorney general under chapter 44-14 WAC.

(2) Prioritizing of requests. Public records requests generally will be processed in the order in which they are received by the records office and within the staffing limitations of the office. However, the records office may expedite requests for a single record or for only a few records, if such records are easily identifiable and can be readily retrieved. The records office may ask, but not require, a requestor to prioritize the records the requestor is seeking.

(3) Clarification of requests. The public records officer may request clarification of a records request in accordance with applicable provisions of the Public Records Act. The requestor must respond to the request for clarification within thirty days of the request.

(4) Providing records by installment. If a requestor submits multiple records requests, or if a requestor seeks a large number of records or many different types of records, the public records officer may provide access to the records in installments in accordance with applicable provisions of the Public Records Act.

(5) Denial of bot requests. The public records officer may deny a bot request as defined under the Public Records Act, RCW 42.56.080(3), if responding to the multiple requests would cause excessive interference with other essential functions of the college and the records officer reasonably believes the request was automatically generated by a computer program or script.

(6) Closure of requests. When the requestor either withdraws the request, or fails to clarify an entirely unclear request, or fails to fulfill the requestor's obligations to inspect records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer will close the request and notify the requestor that the request has been closed.

AMENDATORY SECTION (Amending WSR 05-06-003, filed 2/17/05, effective 3/20/05)

WAC 132Z-276-070 ((Office hours-)) Records exempt from inspection or copying. ((Public records shall be available for inspection and copying during the customary office hours of the district. For 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 holidays established by the college calendar.)) **(1) Public Records Act exemptions.** The Public Records Act, chapter 42.56 RCW, exempts from inspection or copying certain categories of records as set forth in the Public Records Act or under other statutes. The public records officer will disclose the existence of exempt records as required by law, but will deny the inspection or copying of such records to the extent that the records are exempt from inspection or copying under the Public Records Act or other applicable law.

(2) Commonly applied exemptions. The public records office maintains a list explaining the exemptions most commonly applied by the college in processing requests for public records. A copy of the list can be requested from the public records officer and will typically be provided by the

records officer in responding to a request for records that are determined in whole or in part to be exempt from inspection or copying.

(3) Determining applicable exemptions. The public records officer may seek information from the requestor sufficient to determine whether another statute prohibits disclosure of the requested records. For example, student education records generally may not be disclosed to third parties without the student's written consent.

AMENDATORY SECTION (Amending WSR 15-07-091, filed 3/17/15, effective 4/17/15)

WAC 132Z-276-080 ((Requests for)) Public records available for inspection. ((In accordance with the requirements of chapter 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 are only obtainable by members of the public when those members of the public comply with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the district which shall be available at the district administrative office. The form shall be presented to the public records officer or, if the public records officer is not available, to any member of the district's staff at the district administrative office during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request was made;
- (c) The nature of the request;
- (d) If the matter requested is referenced within the current index maintained by the public 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 current index, an appropriate description of the 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, or person to whom the request is made, to assist the member of the public in succinctly identifying the public record requested. **(1) Scheduling of appointments.** Public records identified as responsive to a public records request may be made available for inspection and copying during regular office hours by scheduling an appointment with the public records officer. The requestor must review the assembled records, or installment of records, within thirty days of being notified that the records are available for review. The records officer will notify the requestor in writing of this requirement and will ask the requestor to contact the records office 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 college may close the request.

(2) Protection of records. The public records officer will be responsible for providing full access to public records made available for inspection, for protecting the records from damage or disorganization, and for preventing excessive

interference with essential college functions. Public records made available for inspection may not be removed from the office without the permission of the records officer.

(3) Copying of records. The public records officer will arrange for copying of any records designated by the requestor and will charge such copying fees as may apply under WAC 132Z-276-090.

AMENDATORY SECTION (Amending WSR 96-14-098, filed 7/2/96, effective 8/2/96)

WAC 132Z-276-090 Copying fees—Payments. ~~((No fee shall be charged for the inspection of public records. The district may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records and such charges shall not exceed the amount necessary to reimburse the district for its actual costs incident to such copying. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate district official. All charges must be paid by money order, cashier's check, or cash in advance.))~~ (1) Fees and payment procedures. The following copying fees and payment procedures apply to requests to the college under chapter 42.56 RCW received on or after the effective date of this section.

(2) Inspection of records. There is no fee for inspecting public records made available for inspection by the public records officer under WAC 132Z-276-080.

(3) Actual costs not calculated. Pursuant to RCW 42.56.120 (2)(b), the college is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons: (a) The institution 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 college 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).

(4) Default fees adopted. The college will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The college will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the college may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The college may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the college are summarized in the fee schedule available on the college's web site at www.cascadia.edu.

(5) Advanced payment required - Fee waivers. Requestors are required to pay for copies in advance of receiving records or an installment of records. The records officer will notify the requestor when payment is due. 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 consist of twenty-five or fewer pages; or (ii) all of the records respon-

sive 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.

(6) Copying fee deposits. 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, exceed twenty-five dollars.

(7) Payment method. Payment should be made by check or money order payable to Cascadia College. The college 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) Closure of request for nonpayment. The college 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.

AMENDATORY SECTION (Amending WSR 15-07-091, filed 3/17/15, effective 4/17/15)

WAC 132Z-276-110 Review of denials of ((public)) records requests. (1) ~~((Any person))~~ Petition for internal administrative review. A requestor who objects to the denial, or partial denial, of a records 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 which constituted or accompanied the denial.~~

~~((2) The written request by a person demanding prompt review of a decision denying a public record shall be submitted to the president or designee.~~

~~((3) Within two business days after receiving the written request by a person petitioning for a prompt review of a decision denying a public record, the president or designee, shall complete such review.~~

~~((4) During the course of the review the president or designee shall consider the obligations of the district to comply with the intent of chapter 42.56 RCW insofar as it requires providing full public access to official records, but shall also consider the exemptions provided in chapter 42.56 RCW or other pertinent statutes, and the provisions of the statute which require the district to protect public records from damage or disorganization, prevent excessive interference with essential functions of the agency, and prevent any unreasonable invasion of personal privacy by deleting identifying details))~~ in writing to the public records officer for a review of that decision. The public records officer will promptly refer the petition to the office of the president. A senior administrator designated by the president will consider the petition and will render a decision within two business days following the initial receipt of the petition by the public records officer. The time for considering the petition may be extended by mutual agreement of the college and the requestor.

(2) Review by attorney general's office. A requestor who objects to the denial, or partial denial, of a records request may request the office of the attorney general to review the matter as provided in RCW 42.56.530 and WAC 44-06-160. Requests for attorney general review must be directed to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100.

(3) Judicial review. A requestor may obtain judicial review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative review.

AMENDATORY SECTION (Amending WSR 15-07-091, filed 3/17/15, effective 4/17/15)

WAC 132Z-276-120 Court protection of public records. ~~((Requests for public records shall be made at the administrative office of the district at Caseadia College, 18345 Campus Way N.E., Bothell, WA 98011. 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. Copies of such records may be arranged according to the provisions of WAC 132Z-276-090-))~~ (1) Notifying interested persons. The college, as required or permitted by law or contract, including any collective bargaining agreement, and in other appropriate circumstances, may notify persons named in a public record, or to whom the record specifically pertains, that release of the record has been requested and that such persons may apply to the superior court for a protective order under RCW 42.56.540.

(2) Applying for court protection. The college in appropriate circumstances may apply to the superior court for a protective order enjoining the examination of any specific public record in accordance with the procedures under RCW 42.56.540. Nothing in this chapter shall be construed as either requiring or prohibiting the college's application to the court for such an order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132Z-276-100 Determination regarding exempt records.
- WAC 132Z-276-130 Records index.
- WAC 132Z-276-140 Adoption of form.

WSR 18-07-082
PROPOSED RULES
LOWER COLUMBIA COLLEGE

[Filed March 20, 2018, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-017.

Title of Rule and Other Identifying Information: Amending chapter 132M-110 WAC, Public records disclosure policy; amending WAC 132M-110-010, 132M-110-020, 132M-110-050, 132M-110-060, 132M-110-080, 132M-110-090 and 132M-110-100; and repealing WAC 132M-110-030, 132M-110-040, 132M-110-070, 132M-110-110, 132M-110-120, 132M-110-130, 132M-110-140, and 132M-110-990.

Hearing Location(s): On May 16, 2018, at 5:00 p.m., at 1600 Maple Street, Administration Building, Room 100, Heritage Room, Longview, WA 98632.

Date of Intended Adoption: May 16, 2018.

Submit Written Comments to: Linda Clark, 1600 Maple Street, P.O. Box 3010, Longview, WA 98632, email rulemaking@lowercolumbia.edu, fax 360-442-2129, by May 9, 2018.

Assistance for Persons with Disabilities: Contact Linda Clark, phone 360-442-2100, fax 360-442-2129, TTY 800-833-6388, email rulemaking@lowercolumbia.edu, by May 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 132M-110 WAC to clarify procedures regarding the disclosure of records, new definitions, fees, request procedure, clarification when the request is unclear, and current statute citations.

Reasons Supporting Proposal: HB [ESHB] 1594 and [EHB] 1595 passed during the 2017 legislature, making the Public Records Act amendments effective July 23, 2017. Chapter 132M-110 WAC establishes procedures the college follows to provide full access to public records and to implement the provisions of the Public Records Act (chapter 42.46 RCW). The rule establishes procedure for both persons requesting access to public records and also for college staff. The proposed amendment clarifies procedures regarding disclosure of electronic record in order to remain up-to-date with current technology. Updates to the rule are necessary to keep procedures current and reflect recent legislative changes. The 2017 legislature amended RCW 42.56.120, section 3, chapter 304, Laws of 2017, to require that effective July 23, 2017, if an agency uses 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. Lower Columbia College is not calculating actual costs for copying records because to do so would be unduly burdensome. Lower Columbia College is adopting a rule so it can use the statutory default copy fee schedule.

Statutory Authority for Adoption: RCW 28B.50.140, 42.56.040, 42.56.070, 42.56.100, 42.56.120 (as amended by chapter 304, Laws of 2017).

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: Lower Columbia College, governmental.

Name of Agency Personnel Responsible for Drafting: Kendra Sprague, 1600 Maple Street, Administration Building 115, Longview, WA 98632, 360-442-2121; Implementation and Enforcement: Nolan Wheeler, 1600 Maple Street,

Administration Building 203, Longview, WA 98632, 360-442-2201.

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. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative rules committee has not made that section applicable to the adoption of this 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; 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.

Is exempt under RCW 42.56.070, 42.56.120.

Explanation of exemptions: To the extent there are costs assessed by this agency for records provided in response to public records requests by small businesses, the authorized costs are set out in statute and apply to all requesters. RCW 42.56.070, 42.56.120.

March 15, 2018

Kendra Sprague

Vice President of Foundation
Human Resources and Legal Affairs

AMENDATORY SECTION (Amending Order 1-75, filed 11/10/75)

WAC 132M-110-010 Authority and purpose. ~~((The purpose of this chapter shall be to ensure compliance by the Community College District Number Thirteen with the provisions of chapter 42.17 RCW Disclosure—Campaign finances—Lobbying—Records; and in particular with RCW 42.17.250-42.17.320 of that act, dealing with public records.))~~ (1) RCW 42.56.070(1) requires Lower Columbia College (college or agency) to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures Lower Columbia College will follow in order to provide access to public records. These rules provide information to persons wishing to request access to public records of the college and establish processes for both requestors and college staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public access to information concerning the conduct of government, mind-

ful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the college will be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending Order 1-75, filed 11/10/75)

WAC 132M-110-020 Definitions. (1) ~~((Public records. "Public record" indicates those documents which contain 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.))~~ "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. This definition does not include records that are not otherwise required to be retained by the college and are held by volunteers who:

(a) Do not serve in an administrative capacity;

(b) Have not been appointed by the college to a college board, commission, or internship; and

(c) Do not have a supervisory role or delegated college authority.

(2) ~~((Writing.))~~ "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, ~~((magnetic or punched cards, discs, drums and other documents.~~

~~(3) Community College District Number Thirteen.))~~ 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) Relating to the "conduct of government" means to be a public record, a document must relate to the conduct of government or the performance of any governmental or proprietary function. Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having absolutely no relation to the conduct of government is not a public record. Even though a purely personal record might not be a public record, a record of its existence might be. For example, a record showing the existence of a purely personal email sent by an agency employee on an agency computer would probably be a public record, even if the contents of the email itself were not.

(4) "Prepared, owned, used, or retained" means a public record is a record prepared, owned, used, or retained by an agency. A record can be used by an agency even if the agency does not actually possess the record. If an agency uses a record in its decision-making process, it is a public record. For example, if an agency considered technical specifications of a public works project and returned the specifications to

the contractor in another state, the specifications would be a public record because the agency used the document in its decision-making process. The agency could be required to obtain the public record, unless doing so would be impossible. An agency cannot send its only copy of a record to a third party for the sole purpose of avoiding disclosure.

(5) "Identifiable record(s)" means the public record request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by the college is not a valid request for identifiable records, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of the college's records.

(6) "Bot request" means a request for public records that the college reasonably believes was automatically generated by a computer program or script.

(7) The Community College District Number Thirteen is an agency organized by statute pursuant to RCW 28B.50.040. The Community College District Number Thirteen shall hereinafter be referred to as the "college" and includes the institution known as Lower Columbia College. Where appropriate, the term college also refers to the board of trustees, and the officers, agents, and employees of the college.

AMENDATORY SECTION (Amending Order 1-75, filed 11/10/75)

WAC 132M-110-050 Public records availability. ((All public records of the college, as defined in WAC 132M-110-020 are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310 and WAC 132M-110-100.)) (1) Hours for inspection of records. Once a request is processed, public records of Lower Columbia College are available for inspection or receipt of copies during normal business hours of the college, Monday through Thursday 9:00 a.m. to 4:00 p.m., excluding legal holidays and other college closures. Records must be inspected at the Administration Building, 1600 Maple Street, Longview, WA 98632.

(2) Records index. An index of public records is available for use by members of the public, including nonexempt final orders, declaratory orders, interpretive statements, and policy statements, as defined by RCW 42.56.070(5), issued after June 30, 1990, by the board of trustees of the district, the presidents of the colleges, or their designees.

Form. The index shall reference final orders, declaratory orders, interpretive statements, or policy statements by one or more of the following classifications: Date of implementation, organizational unit, or subject matter.

Requests for access to indexes. Information regarding public inspection of indexes, their location, and a schedule for revising and updating these indexes can be obtained by contacting the public records officer.

(3) Organization of records. Lower Columbia College will maintain its records in a reasonably organized manner. The college will take reasonable actions to protect records from damage and disorganization. A requestor shall not take the college's records from Lower Columbia College offices without the permission of the public records officer or designee. A variety of records are available on the Lower Colum-

bia College web site at www.lowercolumbia.edu. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) The college shall not impose copying charges for access to or downloading of records that the college routinely posts on its public internet web site prior to receipt of a request unless the requestor has specifically requested that the college provide copies of records through other means.

(5) Making a request for public records.

(a) Any person wishing to inspect or receive copies of public records of the college should make the request in person during the college's normal office hours, or in writing on the college's request form, or by letter, fax, or email addressed to the public records officer. While no official format is required for making a records request, the college recommends that the requestor submit requests using the college provided request form. The request form is available at the office of the public records officer and online at www.lowercolumbia.edu. Regardless of format, the request must include the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) Identification of the public records must be for identifiable records; and

(v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, the requestor should so indicate and make arrangements to pay for copies of the records or a deposit.

(c) The public records officer or designee may accept requests for public records that contain the information in subsection (4) of this section by telephone or in person. If the public records officer or designee accepts such a request, they will confirm receipt of the information and the substance of the request in writing.

(d) The act does not allow an agency to provide access to "lists of individuals requested for commercial purposes." The request form includes an inquiry of the requestor whether the request is for commercial purposes. Lower Columbia College may also require a requestor to sign a declaration attesting that the request is not for use for commercial purposes.

AMENDATORY SECTION (Amending Order 1-75, filed 11/10/75)

WAC 132M-110-060 Public records officer. ((The college's public records shall be in the charge of the records officer designated by the college president. The person so designated may in turn designate persons in the administrative office to implement this section. The records officer and his designees shall be responsible for:

(1) The implementation of the rules and regulations of the college regarding release of public records.

(2) Coordinating the staff of the college in this regard.

(3) Insuring compliance by the staff with the public disclosure requirements of chapter 42.17 RCW.)) (1) Any person wishing to request access to public records of Lower Columbia College, or seeking assistance in making such a

request should contact the public records officer of the college:

Vice President of Administration

Lower Columbia College

1600 Maple Street

Longview, WA 98632

Phone: 360-442-2201

Fax: 360-442-2109

Email: publicrecords@lowercolumbia.edu

Information is also available at the college's web site at www.lowercolumbia.edu.

(2) The public records officer will oversee compliance with the act but another college staff member may process requests. Therefore, these rules will refer to the public records officer or designee.

AMENDATORY SECTION (Amending Order 1-75, filed 11/10/75)

WAC 132M-110-080 Requests for public records.

(In accordance with requirements of chapter 42.17 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 with the following procedures:

(1) A request shall be made in writing upon a form prescribed by the college which shall be available at its administrative office on the campus. The form shall be presented to the records officer and/or his designees at the administrative office on the campus during customary office hours. The request shall include the following information:

(a) The name of the person requesting the record;

(b) The time of day and calendar date on which the request was made;

(c) The nature of the request;

(d) If the material requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in the index;

(e) If the material requested is not identifiable by reference to the current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the records officer and/or his designees to assist the member of the public in appropriately identifying the public record requested.

(3) The records officer and/or his designee to whom the request is presented shall respond promptly and

(a) Make the requested document available, or

(b) State that such a document does not exist, or

(c) Ask for clarification of the document requested, or

(d) Deny access if the record is exempt from public inspection under WAC 132M-110-050 as determined by RCW 42.17.310.)

Both requestors and agencies have responsibilities under the act. The public records process can function properly only when both parties perform their respective responsibilities. An agency has a duty to promptly provide access to all nonexempt public records. A requestor

has a duty to request identifiable records, inspect the assembled records or pay for the copies, and be respectful to agency staff.

(1) Providing "fullest assistance." Lower Columbia College is charged by statute with adopting rules which provide for how it will provide full access to public records, protect records from damage or disorganization, prevent excessive interference with other essential functions of the agency, provide fullest assistance to requestors, and provide the timeliest possible action on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) Request clarification from the requestor by telephone or in writing if the request is unclear or does not sufficiently identify the requested records. To the greatest extent possible, the request for clarification will provide a reasonable estimate of the time required to respond to the request if it is not clarified. If the requestor fails to clarify the request, and the entire request is unclear, the public records officer need not respond to it. Otherwise, the public records officer must respond to those portions of the request that are clear. Once clarification is received, the public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) Protecting rights of others. In the event the requested records contain information that may affect rights of others and may reasonably be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the college believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(5) Inspection of records.

(a) Consistent with other demands, the college shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall

indicate which documents he or she wishes the college to copy.

(b) The requestor must claim or review the assembled records within thirty days of the college's notification that the records are available for inspection or copying. The college will notify the requestor in writing of this requirement and inform the requestor to contact the college to make arrangements to claim or inspect the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the college may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying by college staff.

(7) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if the public records officer reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that Lower Columbia College has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill the obligation to inspect the records or pays the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the college has closed the request.

(10) Later discovered documents. If, after the college has informed the requestor that it has provided all available records, the college becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending Order 1-75, filed 11/10/75)

WAC 132M-110-090 ((Copying)) Charges for public records. ~~(No fee shall be charged for the inspection of public records. The college shall charge a minimum fee of twenty-five cents per page of copy for providing copies of public records. In the event the copying of public records would unreasonably burden existing personnel of the college, or additional personnel and/or equipment would have to be added because of the request(s) for copying the public records, then a reasonable charge may be added to the twenty-five cents per copy minimum to reflect the cost for additional personnel or equipment. The increased cost shall~~

~~be determined by the records officer and shall be stated on the form requesting the copying of public records when the same request is approved by the records officer. In any case where the records officer estimates that the cost of duplication of a request will exceed ten dollars, then he may at his discretion require an advance payment of all or a percentage of the cost estimate prior to complying with the request for duplication. When, in the opinion of the records officer, it would be less expensive or more practical to duplicate public records by contract with a printing company, then the records officer shall have the authority to do the same and the actual cost of the printing shall be paid by the person requesting the duplication.)) Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce college resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records. Instead of calculating the actual costs of charges for records, the college president or designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the college charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b). The college may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor. The college may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.~~

AMENDATORY SECTION (Amending Order 1-75, filed 11/10/75)

WAC 132M-110-100 Exemptions. ~~((1) The college reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 132M-110-080 is exempt under the provisions of chapter 42.17 RCW.~~

~~(2) In addition, pursuant to RCW 42.17.260, the college reserves the right to delete identifying details when it makes available or publishes any public record, in any case when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The records officer and/or his designee will fully justify such deletion in writing.~~

~~(3) All denials of requests for public records must 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.))~~

(1) Public Records Act exemptions. There are a number of types of records exempt from public inspection and copying. The college reserves the right to determine that a public record requested in accordance with WAC 132M-110-080, or any portion thereof, is exempt under the Public Records Act.

(2) Other exemptions. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the college for inspection and copying. This is not an exhaustive list as numerous exemptions exist outside of the act to an academic setting. The college's failure to list an exemption here shall not affect the efficacy of any exemption.

(a) RCW 5.60.060 - Privileged communications;

(b) 20 U.S.C. 1232g - Family Educational Rights and Privacy Act (FERPA);

(c) 42 U.S.C. 405 (c)(2)(vii)(1) - Social Security numbers;

(d) 45 C.F.R. 16-0164 - HIPPA privacy rule;

(e) Chapter 19.108 RCW and RCW 4.24.601 - Uniform Trade Secrets Act; and

(f) Chapter 10.97 RCW - Regarding criminal history information.

(3) Identification of exemptions. A denial of any record, in whole or part, shall include a statement of the specific exemption(s) authorizing the withholding of the record (or portion thereof) and a brief explanation of how the exemption applies to the record of information withheld.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132M-110-030	Description of central and field organization of Community College District Number Thirteen.
WAC 132M-110-040	Operations and procedures.
WAC 132M-110-070	Office hours.
WAC 132M-110-110	Review of denials of public records.
WAC 132M-110-120	Protection of public records.
WAC 132M-110-130	Records index.
WAC 132M-110-140	Adoption of form.
WAC 132M-110-990	Appendix A—Request for public record.

WSR 18-07-085

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF TRANSPORTATION

(By the Code Reviser's Office)

[Filed March 20, 2018, 9:58 a.m.]

WAC 468-70-050, proposed by the department of transportation in WSR 17-17-108, appearing in issue 17-17 of the Washington State Register, which was distributed on September 6, 2017, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-07-086

WITHDRAWAL OF PROPOSED RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

(By the Code Reviser's Office)

[Filed March 20, 2018, 9:59 a.m.]

WAC 181-02-002, proposed by the professional educator standards board in WSR 17-18-031, appearing in issue 17-18 of the Washington State Register, which was distributed on September 20, 2017, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-07-087

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF HEALTH

(By the Code Reviser's Office)

[Filed March 20, 2018, 10:01 a.m.]

WAC 246-72-010, proposed by the department of health in WSR 17-18-094, appearing in issue 17-18 of the Washington State Register, which was distributed on September 20, 2017, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-07-088

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed March 20, 2018, 10:02 a.m.]

WAC 388-78A-2595, proposed by the department of social and health services in WSR 17-18-113, appearing in issue 17-18 of the Washington State Register, which was distributed on September 20, 2017, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-07-090
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 20, 2018, 11:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-160.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): On April 27, 2018, at 10:00 a.m., at the Department of Labor and Industries (L&I) Headquarters, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: May 22, 2018.

Submit Written Comments to: Jo Anne Attwood, P.O. Box 44148, Olympia, WA 98504-4148, email JoAnne.Attwood@Lni.wa.gov, fax 360-902-4485, by April 27, 2018, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, TTY 360-902-5797, email JoAnne.Attwood@Lni.wa.gov, by April 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department reviewed these chapters and made revisions to: Correct typographical and other errors (such as invalid or outdated references), specifically, making corrections to classification references which changed as a result of a prior rule making for a number of classifications; revise wording and formatting to make the rules easier to understand and apply; and incorporate and formalize existing agency practices (such as expressly including in a risk classification employment that the department currently includes by interpretation or analogy).

The purpose of this rule making is not to make substantive changes to how the department classifies employment, but to review and revise the classification plan to ensure it is clear and understandable. These changes will not change the way we calculate employer rates, our reporting requirements, or how we classify businesses.

Amendments to WAC 296-17-31014 Farming and agriculture, 296-17A-0217 Concrete flatwork, 296-17A-1106, 1106-00 Rental stores, N.O.C.; Truck canopy sales, 296-17A-1303, 1303-00 Telecommunication service providers—All other employees, 296-17A-2906, 2906-14 Wood piano or musical instrument: Manufacturing, 296-17A-3503, 3503-17 Pottery, earthenware, ceramics, porcelain or china: Manufacturing and 3503-20 Stained or leaded glassware, N.O.C.: Manufacturing, 296-17A-3602, 3602-10 Camera, video camcorder, motion picture projectors; Manufacturing, assembly, or repair, 296-17A-4107, 4107-20 Piano tuning, 296-17A-5301, 5301-18 Telephone answering services, 296-17A-6206, 6206-06 Golf courses, N.O.C., 296-17A-6411, 6411-24 Tobacco and marijuana products, vaporizers and liquids, and smoking accessories, 296-17A-6506, 6506-02 Motion

picture film exchanges, and 296-17A-6705, 6705-00 Ski facilities.

Reasons Supporting Proposal: As part of this rule making, the department also reviewed these chapters for need, clarity, and consistency as required by SSB 5679 (chapter 30, Laws of 2013 2nd sp. sess.) to make changes where possible to reduce the regulatory burden on employers insured with the state fund.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, Washington, 360-902-4777; Implementation: Chris Bowe, Tumwater, Washington, 360-902-4826; and Enforcement: Victoria Kennedy, Tumwater, Washington, 360-902-4997.

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. Since the proposed rules do not change any existing coverage options for employers or workers and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

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 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.

March 20, 2018

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 16-14-085, filed 7/5/16, effective 1/1/17)

WAC 296-17-31014 Farming and agriculture. (1) What is the classification approach for farming?

We classify farming and agricultural operations by the type of crop or livestock raised. Farmers and ranchers often have several basic classifications assigned to their account covering various types of crops or livestock.

Note: If we assign multiple classifications to your farm or agriculture business, take special care in maintaining the records required in the auditing and recordkeeping section of **WAC 296-17-35201 Recordkeeping and retention**. If you fail to keep the required records, we will assign all worker hours for which the records were not maintained to the highest-rated classification applicable to your business or the highest-rated classification a worker was exposed to.

(2) Who do the farming and agriculture rules apply to?

If we assign one or more of the following classifications to your business, this rule applies to you: 4802, 4803, 4804,

4805, 4808, 4809, 4810, 4811, 4812, 4813, 7301, 7302, and 7307.

(3) If I am involved in diversified farming, can I still have one classification assigned to my account to cover all of the farming I am involved in?

Yes, you can request assignment of a single classification to cover all of your farming operations by contacting your account manager.

(4) How will the department determine what single farming classification will be assigned to my business?

The approach used to assign a single classification to a farming business is similar to that used for construction contractors. We prorate based on the information you provide. We need you to estimate the number of hours to be worked by your employees by type of crop or livestock being cared for. We use this information to estimate the premium which would be paid using multiple classifications. The total premium is then divided by the total estimated hours to produce an average rate per hour. We then select the classification assigned to your business which carries the hourly premium rate which is the closest to the average rate determined by your estimated hours. However, classification 4806 is not to be assigned to any grower as the single farming classification. See **WAC 296-17A-4806**.

Note: See WAC 296-17-31013(4) for an example how single classifications are determined.

(5) How will I know what single farming classification you have assigned to my business?

We will send you a written notice of the basic classification that will apply to your entire operation.

(6) If I requested a single classification for my farming operation, can I change my mind and use multiple classifications?

Yes, but let your account manager know you decided against using the single classification and will report the work by type of crop or livestock. This will avoid any potential confusion if you are audited.

(7) I have workers who do not use or operate any tools or equipment; can I classify these workers separately?

The special exception classification 4806 is available to farms classified in 4802 or 4803. It is limited to harvesting operations where all of the workers pick or harvest by hand without the use of any:

- Cutting tools, such as knives or clippers;
- Machinery;
- Ladders, climbing equipment, or stools.

(8) What is a farm labor contractor?

A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating, and fertilizing. Generally, work involves manual labor tasks as opposed to machine operations.

(9) I am a farm labor contractor. How is my business classified?

If you are supplying only laborers to a farm, we will assign the same classification given to the farm for the work performed. However, if you supply both machine operators and the machinery to a farm, the machine operators are assigned to classification 4808-11, Custom farm services by

contractor, since machinery work carries the same hazard regardless of the crop.

(10) Farm internship pilot (~~(program)~~) project. Who may participate in the farm internship pilot (~~(program created by the department as a result of Title 49 RCW, effective June 12, 2014)~~) project established by RCW 49.12.470?

Small farms with annual sales of less than \$250,000 per year located in (~~(San Juan, Skagit, King, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Island, Snohomish, Kittitas, Lincoln, and Thurston)~~) certain qualifying counties (~~(that)~~) as identified by RCW 49.12.470 who receive a special certification from the department may have farm interns. Employers who qualify may report up to three farm interns. Farm internship (~~(program)~~) project risk classifications are: WAC 296-17A-4814, 296-17A-4815, and 296-17A-4816. The farm internship project is administered by the employment standards division of L&I.

AMENDATORY SECTION (Amending WSR 17-03-109, filed 1/17/17, effective 4/1/17)

WAC 296-17A-0217 Classification 0217. Applies to:

Contractors engaged in the construction and/or repair of:

- Concrete flatwork not covered by another classification (N.O.C.);

- Concrete foundations and flatwork for wood structural buildings;

- Concrete sawing, drilling and cutting not covered by another classification (N.O.C.).

Work contemplated by this classification includes, but is not limited to:

- Set-up and tear down of forms;
- Placement of reinforcing steel and wire mesh;
- Pouring and finishing of concrete;

- Concrete sawing, drilling and cutting operations in connection with wood frame and nonwood frame buildings and structures.

Projects could include, but are not limited to:

- Walkways, pathways, patios, fences and curbing;
- Concrete footings, stem walls, floor pads, cellar or basement floors, garage floors;

- Swimming pools and ponds;

- Sawing, cutting and drilling for ventilation boxes in the footings or stem walls;

- Cutting out for windows or doorways;

- Preparing to mount brackets for stairways or interior bearing walls;

- Cutting interior walls as part of a building renovation project;

- Cutting out for electrical and switch boxes;

- Repairing defective areas.

Excluded phases of work:

- Worker hours engaged in land clearing or excavation work for a land clearing or excavation contract, which are classified in **0101**;

- Worker hours engaged in concrete work contained within a building or structure made of concrete, masonry, iron or steel frame, such as the foundation, floor slab, precast or poured in place bearing floors or wall panels, columns, pil-

lars, metal erection or any other portion of the building or structure itself, which are classified in **0518**;

- Worker hours engaged in paver stone installation projects such as, but not limited to: Driveways, walkways, patios and pool decks, which are classified in **0301**;

- Worker hours engaged in concrete work performed on or in connection with projects on highways, streets, or roadways, including sidewalks, curbs, gutters, median or retaining walls, or sawing, drilling or cutting operations as part of the roadway which are classified in **0214**;

- Worker hours engaged in bridge construction which are classified in **0201**;

- Worker hours engaged in new dam construction which are classified in **0701**;

- Worker hours engaged in concrete landscape curbing which are classified in **0301**.

For administrative purposes, classification 0217 is divided into the following subclassifications:

0217-00 Concrete flatwork - Construction and/or repair: N.O.C.

0217-01 Concrete foundation and flatwork construction and repair: Wood structural buildings

0217-02 Concrete sawing, drilling and cutting, N.O.C.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-1106 Classification 1106.

1106-00 Rental stores, N.O.C.; Truck canopy sales

Applies to establishments engaged in the rental of items, not covered by another classification (N.O.C.), such as hand tools, air compressors, automotive tools, baby equipment, convalescent equipment, exercise equipment, floor care equipment, pressure washers, party and banquet equipment, light construction tools or equipment such as saws, drills, and sanders, and lawn and garden equipment, as opposed to machinery or larger commercial or industrial equipment. The tools and equipment are generally rented to homeowners for use on their property. Rental stores within this classification rent a variety of tools and equipment unlike specialty rental stores that specialize in one type of product. This classification includes clerical office personnel, sales personnel, as well as the maintenance and repair of rented goods when performed by employees of the rental store. This classification also applies to establishments engaged in the sale and installation of truck canopies and related accessories, but who do not sell other types of vehicles or trailers.

This classification excludes establishments engaged in the rental of commercial or industrial equipment and/or machinery such as, but not limited to, bulldozers, tractors, and backhoes which are to be reported separately in classification 6409; establishments engaged in the rental of farm machinery equipment which are to be reported separately in classification 6408; establishments engaged in the rental of vehicles which are to be reported separately in the applicable classification; establishments engaged in the rental of sporting goods which are to be reported separately in classification ((6309)) 6406; establishments engaged in the rental of clothing or costumes which are to be reported separately in classification

6305; and establishments engaged in the rental of furniture which are to be reported separately in classification 6306.

AMENDATORY SECTION (Amending WSR 17-11-120, filed 5/23/17, effective 7/1/17)

WAC 296-17A-1303 Classification 1303.

1303-00 Telecommunication service providers - All other employees

Applies to establishments engaged in providing telecommunications services which enable subscribers to converse or transmit coded data. Work contemplated by this classification includes, but is not limited to, the regular installation, maintenance and repair of machinery and equipment, the extension and maintenance of lines (including poles, towers and underground lines), clearing right of ways, installing telephones and wiring in buildings, and making service connections when done by employees of an employer having operations subject to this classification. Machinery and equipment includes, but is not limited to, central control and switching center equipment, relays, computers, antennae, cranes, forklifts, vehicles and garages, warehouse equipment, and hand tools.

This classification excludes clerical office, exchange operators and administrative personnel who are to be reported separately in classification 1304; contractors engaged in underground line construction maintenance or repair who are to be reported separately in classification 0107; contractors engaged in overhead line, pole, and tower construction, maintenance or repair, who are to be reported separately in classification 0509; contractors engaged in wiring within buildings and making pole-to-house hook-ups who are to be reported separately in classification 0608; contractors engaged in the installation or contract maintenance of machinery or equipment who are to be reported separately in classification 0603; and establishments primarily engaged in selling telephone equipment retail which are to be reported separately in classification ((6406)) 6411.

1303-01 Telegraph companies - All other employees

Applies to establishments engaged in providing telecommunication services which enable printed messages (telegrams) to be transmitted from one agent to another for receipt by, or delivery to, a designated party. Telegraph companies also provide a "moneygram" service which allows an agent to receive a sum of money at one location and transmit a message to another agent to pay out the same amount of money to a designated party at another location. Work contemplated by this classification includes the regular installation, maintenance and repair of machinery and equipment, the extension and maintenance of lines (including poles, towers and underground lines), installing transmission and receiving equipment, the clearing of right of ways, and delivery work when done by employees of an employer having operations subject to this classification. Machinery and equipment includes, but is not limited to, cables, control panels, poles, lines, relays, computers, cranes, forklifts, vehicles and garages, warehouse equipment, and hand tools.

This classification excludes clerical office and administrative personnel who are to be reported separately in classification 1304; contractors engaged in underground line construction maintenance or repair who are to be reported separately in classification 0107; contractors engaged in overhead line, pole, and tower construction, maintenance or repair, who are to be reported separately in classification 0509; contractors engaged in wiring within buildings who are to be reported separately in classification 0608; and contractors engaged in the installation or contract maintenance of machinery or equipment who are to be reported separately in classification 0603.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-2906 Classification 2906.

2906-01 Pattern or model - Metal, plastic or wood: Manufacturing

Applies to establishments engaged in making metal, plastic, or wood patterns or models. Patterns or models produced may include industrial, aircraft, foundry, architectural scale and mechanical models. Use of this classification is limited to the fabrication of individual or prototype pieces. Work contemplated is limited to fabricating the pattern or model using woodworking and metal cutting tools, sanding and filling voids with fillers (wood or plastic); and extensive hand finishing of all these mediums when performed by employees of an employer subject to this classification.

This classification excludes pattern or model making by other manufacturers unless specifically allowed for in the manufacturing classification, and establishments engaged in the manufacture of plastic or wood model kits (assembly of a scale model of a car, boat, or plane) which is to be reported separately in the applicable classification.

2906-14 Wood piano or musical instrument: Manufacturing

Applies to establishments engaged in the manufacture of wood musical instruments including, but not limited to, pianos, organs, violins, harps, and guitars. Work contemplated by this classification includes various phases of woodworking techniques required to manufacture cases, sounding boards, pedals and action boards, metal working techniques required to produce components such as pipes, frames, switches, magnets, wind reservoirs and blower systems, and incidental tanning of skins for drums and banjos when done by employees of an employer having operations subject to this classification. This classification applies whether the company is producing all component parts or assembling a wooden musical instrument from purchased parts. This classification includes the reconditioning and subsequent sale of reconditioned pianos, organs, and wooden musical instruments.

This classification excludes the manufacture of metal musical instruments which is to be reported separately in classification 3404; tuning or repair of pianos which is to be reported separately in classification 4107; and the sale of new piano and organs or wooden musical instruments which is to

be reported separately in (~~classification 6306 or 6406 as~~) the applicable store classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3503 Classification 3503.

3503-17 Pottery, earthenware, ceramics, porcelain or china: Manufacturing

Applies to establishments engaged in the manufacture of a wide variety of household or decorative items such as earthenware, pottery, ceramics, porcelain or china. Casting and throwing are the most common techniques. Other techniques include pressing, extrusion and sculpturing. Finished products include, but are not limited to, pots, bowls, dishes, plates, cups, cookie jars, vases, dolls, tobacco pipes, and novelty items. Materials include clay, sand, fluxing agents, paints, and glazing compounds. Machinery includes, but is not limited to, hand tools, potter's wheels, kilns, and plaster molds. In the casting method, clay is mixed with water and other additives until it is about the consistency of thick cream (called slip). The molds are closed shut and secured; then the slip is poured into them through a small hole at the top, and left in the mold to dry for a short time then poured out, leaving a hollow product to fire. In the throwing method, the clay mixture is placed on a potter's wheel and molded by hand as the wheel slowly turns. The pressing technique forces relatively dry clay into molds under substantial hydraulic pressure, which makes it hold its shape until fired. Extrusion forces a ribbon of clay through specially shaped dies, then it is cut with wire to create the final form. Sculpturing is hand carving wet clay to the desired dimensions. The resulting greenware from any method may be sanded, then further dried and fired in a small kiln. Most of the items will be glazed and refired several more times, depending on the desired end result. Prior to glazing, products may be decorated by hand painting designs on them. Most of the establishments in this classification are small shops that make the products they sell, either at their shop or occasionally at craft fairs. The teaching of classes and the incidental sale of ceramic and pottery making supplies or tools to home crafters is included within the scope of classification 3503-17. This classification includes establishments that only make molds by casting shapes in plaster, most of which they sell to ceramic shops for use in casting greenware.

This classification excludes the mining, digging or quarrying of raw materials which is to be reported separately in the applicable classification; manufacture of decorative tile which is to be reported separately in classification 3503-19; manufacture of brick or concrete products such as, but not limited to, brick or clay pipe and concrete tile which is to be reported separately in the classification applicable to the work being performed; and establishments whose primary business is the sale of supplies used for crafts or hobbies which are to be reported separately in classification (~~6309~~) 6406.

~~((Special note: Care must be taken when considering classifications 6309 or 3503. Classification 6309 is to be assigned to establishments whose primary business is the sale of supplies such as, but not limited to, ceramic and pottery~~

~~making materials or tools. Classification 6309 does not cover the manufacture, fabrication or assembly of craft or hobby items for sale, but includes the teaching of classes and the assembly of an individual piece or two for display.)~~

3503-19 Decorative tile: Manufacturing

Applies to establishments engaged in the manufacture of decorative tile from cement or various clay mixtures. Raw materials include clay, sawdust, straw, coal dust, sand, and glazing compounds. Machinery includes, but is not limited to, hand tools, hydraulic presses, automatic grinding and polishing machines, hand grinding and polishing stones and laps, batch mixers, molds, hand trucks, kiln ovens and steam curing rooms. Cement tiles are usually pressed on hydraulic presses, kept wet until cured, then ground to size with a diamond wheel and polished. To make cast clay tiles, clay is mixed with water and other ingredients, ground to desired fineness, screened, then poured into molds to dry. After drying, tiles are removed from molds and fired in a kiln oven, then glazed. Tile glaziers apply designs to bisque tile by hand or with a silk screen process, then glaze and fire it in a kiln one or more times. This classification includes the manufacture of decorative artificial rock or brick used as trimming around fireplaces, stoves, or on walls. To make artificial rock or brick, coloring is added to a mixture of cement and aggregate; the mixture is poured into molds. After the mixture has set, the piece is removed from the mold and cured.

This classification excludes the mining, digging or quarrying of the raw materials which is to be reported separately in the applicable classification; the manufacture of pottery, earthenware, ceramics, porcelain or china which is to be reported separately in classification 3503-17; and the manufacture of brick or concrete products such as brick or clay pipe and concrete blocks or stepping stones, drain tile, beams which is to be reported separately in the classification applicable to the work being performed.

3503-20 Stained or leaded glassware, N.O.C.: Manufacturing

Applies to establishments engaged in the manufacture of stained or leaded glassware not covered by another classification (N.O.C.) including, but not limited to, windows, tiffany style or plain glass lamp shades, terrariums, or decorative items such as aquariums, shadow boxes, mirror picture frames or figurines. Much artistic hand labor is involved in making stained glass items. Pattern paper, masking tape, kerosene, wire solder, putty, and H-lead comes (slender, grooved bars) are received from others. Individual pieces of a design are cut to pattern out of stained glass; pieces may be ground for a precision fit on an emery or diamond wheel. Individual segments are pressed into the channels of the lead came; joints are fluxed, soldered and putty is pushed into any open spaces between the glass and the comes. The finished piece is smoothed and cleaned with kerosene. While lead comes are more widely used, copper foil may be used instead of lead. Manufacturers may also paint on glass and fire it in a kiln; this is most often done for stained glass window insets. Employers subject to this classification may repair items such as stained glass windows. If the repair requires bent or shaped glass, they make a mold and heat the replacement glass in a kiln oven until it "slumps" or bends to the shape of the mold.

Most manufacturers in this state purchase their stained glass from others; however, the manufacture of stained glass is contemplated within the scope of this classification. Raw materials such as, but not limited to, sand, soda ash, and metal oxides are melted in a furnace and the molten glass is either rolled into sheets by machine or blown into long balloon shapes that are slit open and flattened by reheating. Color may be added to the surface while it is still molten. Some incidental manufacturing of insulated glass, such as sandwiching leaded glass between two sheets of clear glass, is included within the scope of this classification, but production line manufacturing of insulated glass is to be reported separately in classification 1108. Most of the establishments in this classification are small shops that make the products they sell, either at their shop or occasionally at craft fairs. The teaching of classes and the incidental sale of supplies or tools used to make glassware items to home crafters is included within the scope of this classification.

This classification excludes the mining, digging or quarrying of raw materials which is to be reported separately in the applicable classification; establishments that manufacture optical goods or telescopes, or perform precision grinding of blank or rough lenses, which are to be reported separately in classification 6604; establishments engaged in etching, frosting, sandblasting, carving, grinding, and beveling glass which are to be reported separately in classification 1108; establishments engaged in melting or blowing glass which are to be reported separately in classification 3503-21; and establishments whose primary business is the sale of supplies used for crafts or hobbies which are to be reported separately in classification ((6309)) 6406.

~~((Special note: Care must be taken when considering classifications 6309 or 3503. Classification 6309 is to be assigned to establishments whose primary business is the sale of supplies such as, but not limited to, materials or tools used to make glassware items. Classification 6309 does not cover the manufacture, fabrication or assembly of craft or hobby items for sale, but includes teaching of classes and the assembly of an individual piece or two for display.))~~

3503-21 Glassware, N.O.C.: Manufacturing; Melting, blowing, and forming hot glass

Applies to establishments engaged in manufacturing housewares, decorative and specialty items not covered by another classification (N.O.C.) from hot glass using methods that include melting, blowing, or forming. Items include, but are not limited to, tableware, bakeware, perfume bottles, candlestick holders, kerosene lamp chimneys, auto headlight lenses, radio insulators, doorknobs, paperweights, and ashtrays. Machinery includes, but is not limited to, hand tools, glass melting furnaces, annealing ovens, mixing machines, ball mills, glass cutting diamond saws, glass grinding wheels and discs, glass polishing laps, drill presses, steel cutting saws, arc and gas welders, forklifts, overhead cranes or hoists. Some shops make their glass from raw materials including oxides, volcanic ash, soda ash, silica sand, lime, phosphate, or borax which are received from outside sources. Others will heat glass chips (frit) in a furnace, and work the molten glass into decorative or functional shapes by molding or blowing. The molten glass is poured into molds to make products such as, but not limited to, heavy glass for special

purpose windows up to about eight inches thick. Molten glass may also be poured into cold water to make "frit" which is either sold or used for further processing. The molten glass can also be formed in a mouth-blowing process or by semiautomatic blowing machines. A glass blowing process will usually have a helper working with each glass blower. The helper's duties include preliminary glass gathering and blowing, adding colored glass "ribbons" to the item being blown as the glassblower turns it, shaping items being blown with wooden or metal tools, and placing the blown object in an annealing oven to be reheated and cooled slowly to relieve internal stress in the glass. When glass reaches room temperature, it is often cut on diamond wheels or ground down and polished on a series of wheels, stones, and laps. This work is normally done under a continuous water bath which may include grinding or polishing compounds.

This classification excludes the mining, digging or quarrying of raw materials which is to be reported separately in the applicable classification; establishments engaged in manufacturing stained or leaded glassware which are to be reported separately in classification 3503-20; establishments that manufacture optical goods or telescopes, or perform precision grinding of blank or rough lenses, which are to be reported separately in classification 6604; and establishments engaged in etching, frosting, sandblasting, carving, grinding, and beveling glass which are to be reported separately in classification 1108.

3503-23 Agate or enamel ware: Manufacturing

Applies to establishments engaged in enameling or porcelainizing products they have made or products made by others. Enamel is defined as a vitreous, usually opaque, protective or decorative coating baked on metal. Enameled products vary widely, including but not limited to, signs, cookware, items made from ceramics or clay, stove parts, or small parts for automobiles, to sewer pipe, automobile manifolds, or irrigation water gauges. Machinery includes, but is not limited to, ball mills, silk screen equipment, blenders or mixers, scales, kilns, degreasing and acid etching tanks, spray guns, heaters, conveyors, and fork lifts. The enameling process is essentially the same regardless of the product. Ceramic balls and frit (small glass chips) are placed in the ball mill. (A ball mill is a metal drum lined with rubber.) As the drum rotates, the balls roll over the frit, gradually grinding it into powder. Some enameling shops purchase the powder ready-made. To obtain desired colors, various mixes of glaze powders are prepared and placed on 1" to 2" square metal chips and baked in a small kiln. When the formulas are ready for all colors required, the job goes to the production line. The object to be glazed is cleaned, degreased, and given an acid bath if necessary, then rinsed and dried. The enamel (or porcelain) glaze may be applied by hand, silk screened on, or sprayed on with a spray gun. After the coating has air-dried, the piece heated in a kiln to melt the ceramic powder and fuse it to the surface; then cooled. Items may require repeated coatings and firings.

This classification excludes the manufacture of enameled brick which is to be reported separately in classification 3501.

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

WAC 296-17A-3602 Classification 3602.

3602-01 Electrical, telegraph or radio component, telephone set: Manufacture, assembly, or repair

Applies to establishments engaged in the manufacture, assembly, or repair of components related to the telegraph, electrical, radio or telephone industry. Component parts may be for items such as, but not limited to, radio or television sets, hearing aids, transformers, coils, condensers, switches, antennae, phones, speaker units, dials, rheostats, plugs, arrestors, resistors, and electrical control relays, circuit breakers, or other parts necessary to accomplish radio, electrical, telegraph or telephone communication. Materials include, but are not limited to, metal, plastic, and wood used for the outside casings, and component parts. Some establishments in this classification manufacture the casings and the internal components. Other establishments in this classification assemble the ready-made parts with air and hand tools such as, but not limited to, drill presses, solder guns, or saws. Internal parts are usually assembled simply by clamping circuit boards in place, then soldering small pieces together. This classification includes engineers, research and laboratory personnel employed by establishments having operations subject to this classification. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-02 Instrument - Scientific, medical, or professional: Manufacturing; magnetic tape: Manufacturing

Applies to establishments engaged in the manufacture of instruments used in medical, scientific, or professional applications. This classification also applies to establishments engaged in the manufacture of magnetic tapes. Instruments in this classification range widely in shape and size; they include, but are not limited to, dental or surgical instruments, microscopes or other scientific testing or research instruments, surveyors' instruments, and electrical testing instruments. Materials include, but are not limited to, metal, glass, plastic, or wood for casings, and component parts. Processes vary depending upon the product being produced, and could involve some stamping, machining, and heat-treating. However, component parts are usually manufactured by others, and establishments in this classification perform a substantial amount of hand assembling, inspecting, testing, and packaging operations. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-03 Sound recording equipment: Manufacturing

Applies to establishments engaged in the manufacture of sound recording equipment. Establishments in this classification may manufacture all or some equipment such as instruments for measuring sounds, and generators (for producing sounds), filters or modulators (for processing sounds), magnetic or tape recorders (for storing sounds), and speakers (for reproducing sounds). Materials include, but are not limited to, metal, glass, plastic, or wood for casings, clamps, glue or epoxy, and component parts. Components may be produced by the manufacturer or purchased from others and assembled. The assembly may be partially or wholly automated. Machinery includes, but is not limited to, shears, drill presses, grinders, soldering guns, welding equipment, and air or hand tools. There may be inspection areas and sound testing rooms. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-04 Thermometer and steam gauge: Manufacturing

Applies to establishments engaged in the manufacture of thermometers and/or steam gauges. The most common type of thermometer is a mercury thermometer which consists of a capillary tube that is sealed at its upper end and is enlarged into a spherical or cylindrical bulb at its lower end. This bulb is filled with mercury and mounted on a thin metal or plastic sheet. The manufacturers of steam gauges may simply assemble component parts with hand tools, test, and package them. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-05 Dental laboratories

Applies to establishments engaged in the manufacture of dentures, artificial teeth, braces, and retainers. These types of establishments are generally referred to as dental laboratories. The manufacture of these items involves precision work with castings, plastic or vinyl molding, and light wire forming. In the state of Washington dental laboratories can fit patients for dentures, in addition to making the denture which is included when performed by employees of employers subject to this classification. This is a shop only classification. Repair work when specified is limited to work performed at the shop. Shops may include kiosks in malls that make custom dental molds used in tooth whitening treatments.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-06 Jewelry: Manufacturing or engraving; trophy assembly or engraving

Applies to establishments engaged in the manufacture or engraving of jewelry, such as, but not limited to, rings, bracelets, necklaces, earrings, watchbands, pins, brooches, and cigarette lighters. Jewelry manufacturing or engraving involves working with precious metal and/or stones. Operations usually include polishing, buffing, drilling, and assembly, mixing and melting alloys and metals, then pouring the mixture into small casts. This classification also applies to establishments engaged in assembling or engraving trophies on a production basis. For purposes of this classification, assembly means making trophies from premanufactured components purchased from others. The engraving may be done by "etching" or by computer. In the etching method, patterns or lettering are cut into a metal strip that is coated with a solution resistant to etching acids. The metal strip is treated with etching acids that "melt away" the uncoated portion of metal, leaving an impression of the design. Computerized engraving is done by keying the designs or letters into the computer; the designs are transmitted to an "arm" on the computer which "draws" (engraves) them onto the metal plate. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification; the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used; and establishments engaged in the manufacture of watches which are to be reported separately in classification 3602-09.

Special note: This classification is for manufacturers engaged in the mass production of jewelry items and is distinguishable from jewelry stores reported in classification 6308 that produce custom, one-of-a-kind pieces on a special order basis. Trophy stores in classification 6308 may assemble components to make custom trophies, or engrave plaques for the trophies they sell. Assembly and engraving that is incidental to their retail sales operation is included in their store classification.

3602-07 Electronic parts: Assembly

Applies to establishments engaged in the assembly of electronic parts which are usually sold to other manufacturers. They may have automated/robotics assembly lines for all or part of the processes. In manual operations, small parts are soldered, chipped, riveted, or screwed into place with hand tools such as, but not limited to, soldering guns, riveters, drills, screw drivers, or water jets. This classification also applies to establishments engaged in the manufacture or assembly of computers and the manufacture of dry cell (flashlight type) batteries. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported

separately in the classification applicable to the production process used.

3602-08 Electrical/electronic ignition assembly, cord set, or radio set: Assembly

Applies to establishments engaged in the assembly of electrical/electronic ignition assemblies, cord sets, and radio set components. An ignition assembly is a switching component that allows an electrical circuit to be completed in order to start a piece of machinery or equipment. Electrical cord sets are the portion of wiring found on appliances and tools that plug into electrical power sources. A radio set is comprised of an input circuit for tuning in to the frequencies of the various transmitters to be received, the demodulation circuit for separating the audio-frequency from the high-frequency carrier, a low-frequency amplifier stage, and the loudspeaker. The amplifier elements are transistors supplied with the necessary operating voltages. Establishments in this classification usually assemble radio component parts and circuit boards that are manufactured by others. The assembly is accomplished by soldering, clipping, riveting, and welding the parts into place. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-09 Watch: Manufacturing

Applies to establishments engaged in the manufacture of watches. The component parts are usually mass produced on an assembly line. Watch cases are usually made from sheet metal or plastic; watch faces are made from plastic or glass. The internal works are very small gears or springs and/or computer chips. The face may have hands and a dial, or may consist of a light emitting diode (LED). This classification includes the manufacture of internal works of clocks. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes establishments engaged in the manufacture of jewelry which are to be reported separately in classification 3602-06; establishments engaged in the manufacture of wooden housings or casings for clocks such as grandfather and mantle types which are to be reported separately in classification 2905; all outside repair work which is to be reported separately in the applicable services classification; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-10 Camera, video camcorder, motion picture projectors: Manufacturing, assembly, or repair

Applies to establishments engaged in the manufacture, assembly, or repair of cameras, video camcorders, and motion picture projectors. Materials include, but are not limited to, metals, plastics, glass and internal components. Machinery includes, but is not limited to, punch presses, drill presses, and soldering guns. Establishments in this classifica-

tion often assemble products from internal components manufactured by others. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

Special note: When an establishment subject to this classification has a retail store, if all the conditions of the general reporting rules covering the operation of a secondary business have been met, then both classifications ((6406)) 6411 and 3602-10 may be assigned. Otherwise, all operations are to be reported in the highest rated classification of the two.

3602-11 Fishing tackle: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of fishing tackle. For purposes of this classification, the term fishing tackle is limited to lures, spinners, spoons, flies, plugs, sinkers, artificial bait and similar items. Work contemplated by this classification includes the receipt of supplies such as wire, hooks, spoons, swivels, beads and feathers, and other components from unrelated manufacturers and distributors, hand assembly of components into finished fishing tackle, painting spoons and plug bodies, packaging and shipping. This classification also contemplates testing of products and research and development of new products. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes the manufacture of items such as, but not limited to, reels, poles, nets, tackle boxes, knives, melting pots, plastic beads, wooden or plastic plug bodies, hand tools (pliers, bench vise), molds, specialty clothing or protective gear which are to be reported separately in the classification applicable to the material and process used to produce the product; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

Special note: Care should be taken when assigning this classification to verify that the product being manufactured is compatible with the manufacturing and assembly processes contemplated within this classification. Most fishing tackle subject to this classification is hand assembled from small component parts.

3602-12 Incandescent lamp or electric tube: Manufacturing

Applies to establishments engaged in the manufacture of electrical or gas-filled bulbs or tubes such as, but not limited to, incandescent lamps, photoflash lamps, flood lamps, fluorescent tubes, X-ray tubes, cathode-ray tubes, neon tubes or artistic style neon tube signs that are not attached to metal backings. The processes and equipment will vary somewhat depending on the type of electrical bulb, tube, or lamp being made, but the basic operation is the same. Component parts such as, but not limited to, glass bulbs, globes, or tubes, tungsten wire, metal bases, shellac, and nitrogen and argon gas are purchased from outside sources. Using flange machines,

the bottom of the glass tubing is fused to the flange to produce the base that is used within the bulb or globe. Metal bases may be milled, and then coated with a sealing compound such as shellac. Mounts are assembled and inserted into the flange on stem machines. The assemblies are seared together, and then the tungsten filaments are fixed between support wires forming the stem. The bulbs or globes are flushed with nitrogen to expel any moisture before the stems are inserted into them. These units are inserted into the metal bases and cemented. Air is evacuated and argon gas is pumped into the bases, after which they are heat sealed and trimmed. Neon tube signs or displays are made by heating a thin tube of glass over a ribbon flame until the tube becomes flexible, blowing air into the tube to keep the glass from collapsing, then, while it is still hot, bending it to shape. Because the glass cools rapidly, the heating and bending is repeated until the desired shape is achieved, then the tube is filled with neon or argon gas and the ends sealed.

This classification excludes establishments engaged in the manufacture of metal fixtures equipped with electrical or gas lighting which are to be reported separately in classification 3402; all outside repair work which is to be reported separately in the applicable services classification; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-14 Musical instrument - Metal: Repair

Applies to establishments engaged in the repair of metal musical instruments which include, but are not limited to, trumpets, trombones, French horns, and tubas. The operations involve primarily hand work such as, but not limited to, brazing and soldering, as well as fitting, testing, and polishing the instruments. Tools include, but are not limited to, solder or brazing guns, lathes, drill presses, and various types of saws. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification; the repair of wood musical instruments which is to be reported separately in classification 2906; and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-23 Electronics products - Resistors, capacitors, chips and relays, transistors: Manufacturing

Applies to establishments engaged in the manufacture of resistors, capacitors, chips, relays, and transistors which are usually tiny and delicate. Products manufactured in this classification are usually mass produced with little human intervention during the production process, which is often done in a vacuum or a nitrogen filled room. Materials include, but are not limited to, silicon, wires, and plastics. In addition to the automated equipment, hand-held tools include, but are limited to, pliers, wrenches, and soldering guns. Finished products are inspected, usually through powerful microscopes, then packaged and shipped. This is a shop or plant only classification. Repair work, when specified, is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-24 Stamped metal goods: Manufacturing

Applies to establishments engaged in the manufacture of small, stamped, metal goods such as, but not limited to, metal tags, buttons, zippers, bottle caps, fasteners, snaps, clasps, buckles, and curtain fasteners. Materials, which come in coils or strips, are run through presses. Most of the stamping is done on automatic stamping presses. Products are cut, stamped, formed, trimmed, and cleaned, then usually finished by plating or lacquering. This is a shop or plant only classification. Repair work, when specified, is limited to work performed at the shop or plant.

This classification excludes the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-27 Electronic circuit board, N.O.C: Assembly

Applies to establishments engaged in the assembly of electronic circuit boards not covered by another classification (N.O.C.) which are used in a wide variety of electronic and automotive products. The process usually begins by cutting boards to size with power saws, then drilling or punching holes in them with automated drills or punches. Depending upon the original materials used, the boards used for the base may be coated or dipped. Then the chips, transistors, resistors, and/or condensers are installed, usually as part of an assembly line process. Next, the circuit boards are dipped and coated with a thin metal. Finished products are inspected, tested, packaged and shipped. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported separately in the classification applicable to the production process used.

3602-28 Stereo components: Manufacturing or assembly

Applies to establishments engaged in the manufacture or assembly of stereo components such as, but not limited to, record changers, disc or video players, receivers and amplifiers. Materials include, but are not limited to, circuit boards, resistors, drivers, baffle plates, chambers, trim/rings, and grills. Equipment includes, but is not limited to, hot glue guns, electric drills, electric screw drivers, and automated assembly or manufacturing equipment. Finished products are inspected, tested, packaged and shipped. This is a shop or plant only classification. Repair work when specified is limited to work performed at the shop or plant.

This classification excludes all outside repair work which is to be reported separately in the applicable services classification, and the production of raw materials used in the manufacturing of the above articles which is to be reported

separately in the classification applicable to the production process used.

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

WAC 296-17A-4107 Classification 4107.

4107-04 Business machines: Service, repair, installation, and recycle, N.O.C.

Applies to establishments engaged in the service, repair, installation, or recycling of business machines not covered by another classification (N.O.C.). This classification includes all work performed on the customer's premises as well as in the employer's shop.

Installation work contemplated by this classification includes low voltage prewiring to the point of connecting to the live circuit. Types of machines or equipment include, but are not limited to:

- Computer components;
- Copiers;
- Depth finders;
- Fax machines;
- Postage meters;
- Radar equipment;
- X-ray or other medical-related electronic equipment.

Recycling in this classification includes printer cartridge recycling or remanufacturing, and the breakdown of computer equipment to remove useable parts to sell or use for rebuilding and resale. The unusable materials are picked up by recyclable materials processors or garbage collectors.

This classification excludes:

- The retail sale of computers and accessories which may be separately reported in classification 6406;
- Recyclable materials processors described in classification 2102;
- Electrical work with a live power source which is to be reported separately in classification 0601; and
- Low voltage wiring which is to be reported in classification 0608.

4107-20 Piano tuning

Applies to establishments engaged in tuning services for pianos, organs, and other keyboard musical instruments. Establishments in this classification will tune, clean, replace the felt, and provide minor repair service such as, but not limited to:

- Removing and replacing bad cords;
- Regluing broken keys;
- Replacing faulty foot pedals. This classification

includes all work performed on the customer's premises as well as in the shop.

This classification excludes:

- Establishments engaged in the sale of pianos and organs which are to be reported separately in classification 6306;
- Establishments engaged in the sale of other types of musical instruments such as string, wind and percussion instruments, which are to be reported separately in classification ((6406)) 6411; and

- Establishments engaged in the reconditioning of pianos and organs (and the related sales of reconditioned pianos and organs) which are to be reported separately in classification 2906.

AMENDATORY SECTION (Amending WSR 17-10-059, filed 5/2/17, effective 1/1/18)

WAC 296-17A-5301 Classification 5301.

5301-10 Accounting or bookkeeping services

Applies to establishments engaged in providing general accounting or bookkeeping services to others. Types of services contemplated by establishments subject to this classification include, but are not limited to:

- Auditing;
- Tax preparation;
- Medical or dental claims processing and billing;
- Advisory services.

This classification includes:

- Clerical office;
- Outside sales, and personnel who travel from one office to another.

This classification excludes establishments engaged primarily in management consultant services that are not otherwise classified, which are to be reported separately in classification 5301-12.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

5301-11 Law firms

Applies to establishments engaged in providing legal services to others. Law firms may specialize in one or more areas of law. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

Special note: This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

5301-12 Management consultant services, N.O.C.

Applies to establishments engaged in providing management consulting services not covered by another classification (N.O.C.). Management consultants typically will observe and analyze:

- Computer or communication systems;
- Mail distribution;
- Organizational structures;
- Planning or development of related business needs;
- Work processes or work flows.

After a thorough analysis, consultants usually prepare a written report for the customer which identifies problem areas and/or recommends improvements to processes or

equipment. Consultants may remain to oversee the implementation of the recommended improvements. Consultants subject to this classification do not sell any product they have recommended although they may act as an agent for their client in purchasing the product. Consulting projects vary from client to client depending upon the contract. Included within this classification are businesses that provide similar consultative services such as, but not limited to:

- Advertising agencies;
- Employer representative organizations;
- Mortgage brokers and financial advisers who do not make purchases on behalf of their clients;
- Public relations companies.

This classification includes clerical office staff, outside sales personnel and other staff who travel from one office to another.

This classification excludes businesses that perform computer consulting for others, which is to be reported in classification 5302.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

5301-13 Credit bureaus; collection agencies

Applies to establishments that are licensed to provide collection and/or credit investigation services to others. Services include, but are not limited to:

- Checking the credit backgrounds of their client's potential customers;
- Collection of NSF checks or delinquent debts owed to clients of the collection agency.

If debts are not collected, the service agency may initiate legal proceedings against the debtor. This classification includes clerical office and outside sales personnel, and other staff who travel from one office to another.

This classification excludes establishments engaged in providing process and legal messenger services which are to be reported separately in classification 6601.

5301-14 Employment agencies

(only to be assigned by the temporary help/leasing underwriter)

Applies to establishments that are licensed to provide employment services for others. Clients of employment agencies may be persons seeking employment or companies looking for employees. Employment agencies usually conduct preliminary interviews with candidates for positions prior to referring them to their client companies for interviews. Generally, establishments subject to this classification place people in permanent positions. This classification includes clerical office and outside sales personnel, and staff who travel from one office to another.

This classification excludes:

- Employees of a temporary help agency who are assigned to work in the administrative or branch offices of the

agency who are to be reported separately in classification 7104;

- Employees of a temporary help agency who are assigned on a temporary basis to its customers who are to be reported separately in the appropriate temporary help classification.

5301-15 Court reporting services

Applies to establishments engaged in providing court reporting services to others. Court reporters record verbatim testimony presented in court proceedings, depositions, public hearings or meetings. The most frequently used method to record testimony is by stenotype machine, although it may be recorded by voice recording on audio tape, or by manual shorthand. Transcription of the recorded material may be performed by the court reporter or by "note readers" or typists. The majority of court reporters today use computer-aided transcription systems. Court reporters may also offer notary public services for their clients. This classification includes clerical office and staff who travel from one office to another.

5301-16 Service and professional organizations

Applies to establishments engaged in protecting or furthering the interest of their members and/or the general public. Many of these operate as nonprofit organizations. Service and professional organizations may perform one or many of the following activities:

- Administer certification tests;
- Arbitrate disputes;
- Award scholarships;
- Collect membership dues;
- Compile, review, and disseminate informational data;
- Disburse funds;
- Host conventions;
- Issue vehicle license registrations, plates, decals, and certificates of title;
- Lobby the legislature;
- Manage promotional marketing programs;
- Maintain a membership directory;
- Offer insurance programs;
- Operate a tourist information center;
- Organize fund-raising campaigns;
- Perform charitable community services;
- Perform collective bargaining;
- Provide counseling, adoption, and advocacy services;
- Provide job placement assistance;
- Publish a newsletter;
- Research and interpret local, state, and federal regulations and apprise members of the results;
- Sponsor athletic leagues and tournaments;
- Sponsor educational training programs.

Also included in this classification are Economic Development Councils, Boards, or Associations. These nonprofit organizations provide economic consulting services and related statistics to government and industry in the promotion of economic stability, and recruit businesses that will create jobs and provide loans from the grant funds they manage. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

This classification excludes:

- Collection of donated items by truck which is to be reported separately in classification 1101;

- Labor unions and employee representative associations which are to be reported separately in classification 6503.

Special note: If a charitable organization subject to classification 5301 operates a retail store for the sale of donated items, the collection of those items by truck, and all store operations, are to be reported separately in classification 6504.

5301-18 Telephone answering services

Applies to establishments engaged in providing telephone answering services or call centers for others. Customers include, but are not limited to:

- Attorneys;
- Medical professionals;
- Private businesses;
- Individuals.

Most answering services today use computerized communications systems to identify company names when answering calls for various companies, obtain correct information about the company to respond to questions, record and relay accurate messages in a timely manner. Related services often offered to customers by telephone answering service companies or call centers include, but are not limited to:

- Dispatching;
- Monitoring alarm systems;
- Placing reminder calls;
- Rental of office space;
- Scheduling appointments for customers;
- Taking orders for customers;
- Troubleshooting technical problems;
- Telemarketing;
- Voice mail or paging.

This classification includes clerical office personnel and staff who travel from one office to another.

5301-19 Travel agencies

Applies to establishments engaged in providing travel arrangement services for others. Travel agencies coordinate all types of travel arrangements for their clients through:

- Air;
- Bus lines;
- Car rental agencies;
- Cruise;
- Hotels;
- Motels;
- Related travel providers;
- Resorts;
- Train;
- Travel insurance companies.

Services vary and could include:

- Arrangement of special needs for people with disabilities or elderly travelers;
- Booking reservations;
- Delivery of tickets and itineraries to clients;
- Selling tickets for tours, excursions, or other entertainment events.

This classification includes clerical office and sales staff who travel from one office to another.

5301-21 Word processing, secretarial, or tutoring services

Applies to establishments engaged in providing word processing or secretarial services to others. Services include, but are not limited to:

- Correcting assignments;
- Desktop publishing;
- Dictation and transcription services;
- Instruction;
- Making copies of documents;
- Student assessments;
- Typing/compiling reports, proposals, resumes, or correspondence;
- Testing;
- Sending faxes.

This classification includes clerical office and outside personnel who travel from one office or instructional environment to another.

Excluded operations: Classification 5301-21 excludes:

- Tutoring programs operated by schools, libraries, and any other organization or enterprise classified 6103 and/or 6104.

Note: WAC 296-17-31017 multiple classifications must be applied when more than one basic classification is assigned.

Special note: This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6206 Classification 6206.

6206-06 Golf courses, N.O.C.

Applies to establishments engaged in operating public or private golf courses. Pro shops, miniature golf courses, and driving ranges operated in connection with the golf course are included in this classification. Typical operations of a pro shop include, but are not limited to, selling golf clubs, golf balls, specialty clothing, and related golfing items, renting carts, arranging tee times, and collecting green fees. Also included in this classification are snack bars operated at the golf course when limited to the same hours as the golf course is open. Typical employees include golf pros, greens keepers, caddies, and snack bar employees.

This classification excludes establishments operating miniature golf courses and driving ranges which are to be reported separately in classification 6208 and "bona fide" restaurant operations which may be reported separately in classification 3905. For purposes of this classification a "bona fide" restaurant at a golf course is operated independent of the course and is open to the public even when the golf course is closed.

Special note: A pro shop operated by an independent concessionaire may qualify for classification ((6309)) 6406, provided the pro shop does not operate the course, collect

green fees, or perform other functions of managing a golf course.

AMENDATORY SECTION (Amending WSR 17-05-095, filed 2/14/17, effective 1/1/18)

WAC 296-17A-6411 Classification 6411. Retail store operations limited to providing any combination of the following merchandise, supplies, or services:

- All types of phones;
- Beads;
- Books, newspapers, magazines, and comic books;
- Cameras;
- Cards (greeting, post, and sports);
- Cosmetics and fragrances;
- Laptops, electronic notebooks and pads, and other small electronic devices;
- Musical instruments (string, wood, brass, wind, and percussion);
- Photography and darkroom supplies;
- Records, music discs, tapes, videos, video games, and software disks;
- Small or portable entertainment players (or parts of player), radios, for homes, offices, or automobiles;
- Smoking accessories and tobacco products;
- Vaporizers and e-liquids;
- Other smaller items, such as playing cards, cups, calendars, puzzles, games, costume jewelry, cosmetics, pencils, pens, notebooks, etc.

Note: Stores in classification **6411** may also carry inventory listed in the scopes language of lower rated store risk classifications, along with the goods listed below, as long as the majority of the merchandise is described by the above list.

Classification 6411 includes:

- Cashiering;
- Cleaning and maintenance of store, storage areas, and associated business offices when performed by store employees;
- Inventory work by store employees;
- Sales of already-prepared snacks, and beverages (for off-site consumption), and/or promotional clothing;
- Parts and batteries for products included in classification **6411**;
- Receiving and returning merchandise at store's loading area;
- Renting items normally sold in classification **6411**;
- Sales work inside store;
- Store security and surveillance;
- Stocking.

Classification 6411 excludes:

- Stores selling merchandise described by a higher rated store classification;
- Delivery drivers who are reported separately in classification **1101**;
- Door to door sales, which are reported separately in subclassification **6309-22**;
- Stores using pallet jacks, fork lifts, conveyors, or other mechanized means of moving merchandise into and within store premises, which are classified in **6406** when merchan-

dise is described by classification **6411** and/or classification **6406**;

- Stand-alone distribution centers or warehouses which are to be reported separately in classification **6407**;
- Repair or installation work, which must be reported separately;
- Sales of pets; see classifications **6406** and **7308**;
- Working at coffee stands, lunch counters, or any on-site food preparation or manufacturing of candy, where employees hours are to be reported separately in classification **3905**;
- Employees doing custom framing; see classifications **6406** and **6309**;
- Product demonstration services which are to be reported in subclassification **6406-40**;
- Businesses providing inventory services which are to be reported in subclassification **6406-00**;
- Wholesales, reported in classification **6407**;
- High volume warehouse and distribution facilities which are reported separately in classification **6407**.

For administrative purposes, classification **6411** is divided into the following retail store subclassification(s):

6411-00 Stores meeting the criteria for classification 6411, but not specifically described in any other subclassification. N.O.C.

6411-14 Wind, string, brass, and percussion musical instruments

Includes hand held keyboards and music instruction.

Excludes:

- Stores selling pianos and organs, see classifications **6406**, **6309**, and **6306**;
- Repair of instruments, which is reported separately in classification **2906** or **3602**; (if more than one is applicable, assign only the highest rated classification for all repair).

6411-19 Coin, stamp, rare metals, and collectible cards

6411-20 Book, videos, electronic games, newspapers, magazines, and comic books

Excludes establishments with coin or token arcades, to be reported in subclassification **6406-00**.

6411-24 Tobacco and marijuana products, vaporizers and liquids, and smoking accessories

Excludes:

- Retail stores primarily selling marijuana infused grocery items or marijuana, see classification ~~((6304))~~ **6403**;
- Retail bakeries selling a variety of baked goods infused with marijuana; see subclassification **3901-00**.

6411-25 Phones, cameras, electronic tablets, laptops, and notebooks, GPS displays, small stereo components and other small portable electronic devices, N.O.C.

Includes stores and kiosks selling and/or arranging DSL, cable, or dish services for phones, computers, televisions and other devices.

Excludes:

- Stores selling office or school supplies, reported in subclassification **6406-11**;
- Stores selling furniture or furniture kits; see classification **6406**, **6309**, or **6306**;

- Stores providing photo development and printing, see classification **6406** or **6506**;
- Workers performing repair work, which is to be reported separately in classification **3602**.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6506 Classification 6506.

6506-00 Photography studios

Applies to establishments engaged in the operation of photography studios. Photographers use a wide range of still and motion cameras; services include both sitting portraits and motion pictures of special events, and are photographed in the studio or at outside locations. Photographers may develop and print photographs in their own studio darkrooms, or they may contract out to an independent photo finishing shop. Studios may also offer services such as retouching negatives, restoration work, mounting and framing pictures, and enlarging photographs. This classification includes glamour and boudoir photography studios which often have a salon where clients have their hair styled and make-up applied. This classification also includes booths, usually located in malls, that will produce photography novelty items such as, but not limited to, cups, shirts and calendars from photographs. Photographs may be taken on location or the customer may bring a picture or negative in to have the image applied to the particular item. Video taping services performed in connection with photography studios is included in this classification.

This classification excludes delivery drivers who are to be reported separately in classification 1101; and establishments engaged in video taping services not in connection with photography studio operations which are to be reported separately in classification 6303.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6506-01 Film processing shops

Applies to establishments engaged in processing film. Operations include, but are not limited to, processing film, reproducing negatives, prints or slides, enlarging pictures, mounting and finishing, storing and mixing chemicals, and inspecting and packaging finished products. Finishing processes may be manual or automated. These shops may offer retail type film developing services to commercial laboratories that provide mass film developing and/or one-hour processing services.

This classification excludes delivery drivers who are to be reported separately in classification 1101.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6506-02 Motion picture film exchanges

Applies to establishments engaged in the operation of motion picture film exchanges. These exchanges receive fully processed movie films from producers, which they cat-

alogue and store for subsequent rental or sale to commercial movie theaters, television networks, or other groups. Film exchanges have a projection room where customers may view the film before they book it. When rented films are returned, they are inspected and repaired as necessary. Repair usually consists of cutting out damaged section and splicing the film with special adhesive and pressure.

This classification excludes delivery drivers who are to be reported separately in classification 1101 and video rental stores which are to be reported separately in classification ~~((6406))~~ **6411**.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6506-03 Microfilming

Applies to establishments engaged in providing microfilming services for others. Microfilming reproduces and preserves documents onto film in greatly reduced sizes to allow the storage of information in less space. Documents are photographed; the film is developed in automatic processing units, then stored on reels or cartridges or cut into microfiche. Establishments subject to this classification usually offer related services such as, but not limited to, advice on setting up micrographic systems, the sale or rental of supplies or equipment, storage facilities, keypunch services, film restoration, and/or the destruction of source materials.

This classification excludes drivers who are to be reported separately in classification 1101.

Special note: Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6705 Classification 6705.

6705-00 Ski facilities

Applies to establishments engaged in operating facilities for all types of skiing such as downhill or cross country. Work contemplated by this classification includes, but is not limited to, parking attendants, operation of artificial snow making machines, ski tows and lifts, ski patrols, ski instruction, conducting excursions, trail grooming, and snow compacting when performed by employees of an employer subject to this classification. This classification also applies to establishments that operate facilities for other similar recreational activities such as snow tubing, windboard sailing, and snowmobiling.

This classification excludes ski rental and sales operations which are to be reported separately in classification ~~((6309))~~ **6406**; overnight lodging facilities which are to be reported separately in classification 4905; food and beverage services which are to be reported separately in classification 3905; ski instructors who are to be reported separately in classification 6705-04 and ticket sales and collection personnel who work exclusively in an office environment or ticket sales booth and have no other duties in or about the

employer's premises who may be reported separately in classification 4904.

6705-03 Excursions - Outdoor recreational, N.O.C.

Applies to establishments engaged in providing outdoor recreational excursions and guide services that are not covered by another classification (N.O.C.). Outdoor excursions include, but are not limited to, fishing, hunting, hiking, horse-back riding, backpacking, mountain climbing, camping, river rides, white water rafting, and teaching survival skills. Employees of employers subject to this classification will routinely include course instructors and guides who conduct excursions. Work contemplated by this classification may include, but not be limited to, accompanying customers on excursions, teaching first aid, survival skills, hygiene, navigation and other courses in connection with outdoor activities, and maintaining equipment.

This classification excludes snow skiing excursions or wind board sailing instruction which are to be reported separately in classification 6705-04.

6705-04 Ski instructors

Applies to establishments who are engaged in providing instruction only in snow/water skiing, surf boarding, sailing and wind sail boarding. Work contemplated by this classification includes, but is not limited to, providing appropriate equipment (skis, snowboards, canoes, etc.) maintaining the equipment, and teaching the technique. This classification excludes establishments that provide the full scope of ski resort services, with or without ski instructors, which are to be reported separately in classification 6705-00 subject to all appropriate exclusions, and the operation of any other full service resort or campground, with or without instructors, which is to be reported separately as applicable.

6705-05 Ski patrols

Applies to establishments engaged in providing *ski patrolling services only*. Work contemplated by this classification includes, but is not limited to, routine surveillance of a ski facility to ensure safe conditions and sufficient snow cover, encouraging safe use of the facility by patrons, and conducting search and rescue for lost or injured skiers either by contract with a ski resort or on an on-call basis in an emergency. This classification excludes establishments that provide the full scope of ski resort services, with or without a ski patrol, which are to be reported separately in classification 6705-00.

WSR 18-07-096
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Children's Administration)
 [Filed March 20, 2018, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-055.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-145-1305 What

definitions do I need to know to understand this chapter?, 388-145-1330 How does the department determine my suitability to become a licensed provider?, 388-145-1355 Am I required to comply with local ordinances?, 388-145-1400 Can employees, volunteers and subcontractors be disqualified from having access to the children in my facility?, 388-145-1405 What can I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check?, 388-145-1430 What are the requirements of an on-site program manager?, 388-145-1460 Do I need to employ consultants at my facility?, 388-145-1475 What are the requirements for volunteers working directly with children/youth at my facility?, 388-145-1560 What toilet and bathing facilities are required?, 388-145-1565 What is the ratio of persons normally on the premises to bathrooms at my facility?, 388-145-1610 What are the requirements for beds in a facility?, 388-145-1835 Am I required to assess a child's need for immediate medical attention?, 388-145-1855 What are the general requirements for managing a child's medication?, 388-147-1305 What definitions do I need to know to understand this chapter?, 388-147-1425 What can I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check?, 388-147-1450 What are the qualifications of a program manager?, 388-147-1565 Are alcoholic beverages, marijuana or illegal drugs allowed at my agency or in our certified homes?, 388-148-1305 What definitions do I need to know to understand this chapter?, 388-148-1365 What are the character and personal requirements for foster parents?, 388-148-1530 Can children participate in everyday activities under my care?, and 388-148-1645 What can I do if I disagree with your decision to modify, deny, suspend or revoke my license, or to disqualify my background check?

The intent of these WAC revisions is to provide foster parents, child placing agencies, and group care facilities further instructions and additional clarity regarding the minimum licensing requirements. The changes include correcting grammatical errors, clarifying licensing standards, and improving rule content for increased understandability.

Hearing Location(s): On May 8, 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 May 9, 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., May 8, 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 April 24, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these WAC amendments is to provide foster parents, child placing agencies, and group care facilities further instructions and additional clarity regarding the minimum licensing stan-

dards. The division of licensed resources (DLR) WAC were overhauled in 2015, and since that time both internal and external stakeholders have provided feedback to improve and increase the understandability of the WAC.

Reasons Supporting Proposal: Feedback has been received from both internal and external stakeholders including foster parents, children's administration (CA) staff, private agency staff, regional medical consultants, assistant attorney generals, the Foster Parent 1624 Statewide Consultation Team, and the CA Indian Policy Advisory Subcommittee. The feedback has been incorporated and will only improve the current WAC consistency, and will provide additional clarity regarding the minimum licensing requirements.

Statutory Authority for Adoption: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832.

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: Kristina Wright, 1115 Washington S.E., Olympia, WA 98504, 360-902-8349.

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 amended WAC are not significant legislative rules under RCW 34.05.328 (5)(c)(iii), therefore a cost-benefit analysis is not required for this filing.

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.

Explanation of exemptions: The proposed rules do not impose more than minor costs on small businesses or small nonprofit organizations.

March 20, 2018
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 18-08 issue of the Register.

WSR 18-07-099
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed March 20, 2018, 3:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-045.

Title of Rule and Other Identifying Information: Chapter 246-980 WAC, Home care aide rules, the department of health (department) is proposing changes to the home care aide program rules to provide clarity, consolidate rules on the same subject matter, and establish new standards of professional conduct.

Hearing Location(s): On May 1, 2018, at 1:00 p.m., at the Department of Health, Town Center 2 Building, 111 Israel Road S.E., Room 158, Tumwater, WA 98501.

Date of Intended Adoption: May 8, 2018.

Submit Written Comments to: Stacey Saunders, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by May 1, 2018.

Assistance for Persons with Disabilities: Contact Stacey Saunders, phone 360-236-2813, TTY 360-833-6388 or 711, email homecareaiders@doh.wa.gov, by April 24, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of health is proposing amendments to the home care aide rules in chapter 246-980 WAC as a part of the five-year rule review process under RCW 43.70.041. The proposed amendments clarify ambiguities reported by stakeholders, consolidate the current rules by subject matter, and create standards of professional conduct for the profession.

Reasons Supporting Proposal: Updating the rules to clarify administrative procedures, current department processes, and provide [providing] consistency between home care aides and other professions that provide long-term care will protect the safety of and improve the quality of care to elderly clients and persons with disabilities who receive this care. The proposed rules related to standards of professional conduct eliminate inconsistencies for long-term care workers who also hold a nursing assistant certified credential.

Statutory Authority for Adoption: RCW 18.88B.021.

Statute Being Implemented: RCW 18.88B.021, 43.70.-041.

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

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Stacey Saunders, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2813; and Enforcement: Marc Defreyn, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4913.

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 Stacey Saunders, P.O. Box 47852, Olympia, WA 98504, phone 360-236-2813, fax 360-236-2901, TTY 360-833-6388 or 711, email homecareaiders@doh.wa.gov.

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.

Explanation of exemptions: Exempt under RCW 34.05.-310 (4)(d): WAC 246-980-030, 246-980-040, 246-980-100, 246-980-115, 246-980-130, and 246-980-160.

March 16, 2016 [2018]
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

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

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

(2) "Date of hire" means:

(a) The date of service authorization for individual providers hired by the department of social and health services ~~((:)); or~~

(b) The date the long-term care worker ~~((is hired by an))~~ provides direct care for pay from any employer, other than the department of social and health services;

(c) The date of hire is specific to each long-term care worker, not to the employer, and does not change if a long-term care worker changes employers. If a long-term care worker is or has been employed by more than one employer, the earliest date of hire will be the date of hire for that worker.

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

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

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

(6) "Medication assistance" has the same meaning as chapter 246-888 WAC.

(7) "Secretary" means the secretary of the department of health.

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

WAC 246-980-020 ~~((Who must be certified as a home care aide?))~~ Long-term care workers and home care aide certification. ~~((+))~~ Any person who is hired on or after January 7, 2012, as a long-term care worker for the elderly or persons with disabilities, regardless of the employment title, must obtain certification as a home care aide, unless exempt under WAC 246-980-025. This includes, but is not limited to:

~~((+))~~ (1) An individual provider of home care services who is reimbursed by the state;

~~((+))~~ (2) A direct care employee of a home care agency;

~~((+))~~ (3) A provider of home care services to persons with developmental disabilities under Title 71A RCW;

~~((+))~~ (4) A direct care worker in a state licensed assisted living facility;

~~((+))~~ (5) A direct care worker in a state licensed adult family home;

~~((+))~~ (6) A respite care provider who is reimbursed by the state or employed by a private agency or facility licensed by the state to provide personal care services; and

~~((+))~~ (7) Any other direct care workers providing home or community-based services to the elderly or persons with developmental disabilities.

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

NEW SECTION

WAC 246-980-025 Individuals exempt from obtaining a home care aide certification. (1) The following individuals are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully pass the entry level training required by RCW 74.39A.074 and meet the requirements of WAC 246-980-040 (1)(b) and (c).

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

(b) An individual provider who provides twenty hours or less of care for one person in any calendar month.

(c) An individual employed by a community residential service business.

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

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

(f) A person working as an individual provider who only provides respite services and works less than three hundred hours in any calendar year.

(g) Any direct care worker exempt under RCW 18.88B.-041(1).

(2) The following long-term care workers are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must meet the requirements of WAC 246-980-040 (1)(b) and (c). The training requirements under RCW 74.39A.074(1) are not required.

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

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

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

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

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

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

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

(i) The department may require the exempt long-term care worker who was employed as a long-term care worker between January 1, 2011, and January 6, 2012, to provide proof of that employment. Proof may include a letter or similar documentation from the employer that hired the long-term care worker between January 1, 2011, and January 6, 2012, indicating the first and last day of employment, the job title, a job description, and proof of completing training requirements. Proof of training will also be accepted directly from the approved instructor or training program, if applicable.

(ii) For an individual provider reimbursed by the department of social and health services, the department will accept verification from the department of social and health services or the training partnership.

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

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

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

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

(2) ~~(The long-term care worker may not work for more than two hundred calendar days from their date of hire without obtaining certification.)~~ A long-term care worker is no longer eligible to provide care without a credential under the following circumstances:

(a) The long-term care worker does not successfully complete all of the training required by RCW 74.39A.074(1) within one hundred twenty calendar days from their date of hire;

(b) The long-term care worker has not obtained their certification within two hundred calendar days from their date of hire, or two hundred sixty calendar days if granted a provisional certificate under RCW 18.88B.041.

(3) This section does not apply to long-term care workers exempt from certification under WAC 246-980-025.

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

WAC 246-980-040 (~~What must a nonexempt long-term care worker do to be eligible for a home care aide~~

~~certification and what documentation is required?~~) **Certification requirements.** (1) To qualify for certification as a home care aide, the applicant must:

(a) ~~Successfully complete (the entry level training required by RCW 74.39A.074(1) before taking the examination;)~~ all training required by RCW 74.39A.074(1) within one hundred twenty calendar days of the date of hire as a long-term care worker;

(b) ~~Successfully pass the home care aide certification examination, after completing training;~~

(c) ~~Become certified within two hundred days of date of hire, or two hundred sixty days if granted a provisional certificate under RCW 18.88B.041; and~~

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

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

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

~~(b) The fee required by the examination contractor.~~

~~(3))~~ An applicant for certification as a home care aide must submit to the department:

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

(b) The exam fee set by the examination vendor and required fees under WAC 246-980-990; and

(c) A certificate of completion from an approved training program indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.074. The certificate of completion or other official verification may also be submitted directly from the approved instructor or training program.

~~((4))~~ (3) An applicant must submit to a state and federal background check as required by RCW 74.39A.056.

(4) An applicant exempt from certification under WAC 246-980-025(2) who voluntarily chooses to be certified must provide documentation of qualification for the exemption. The applicant is not required to take the training required in subsection (1)(a) of this section or provide proof of training completion to the department.

GENERAL REQUIREMENTS ((FOR THE APPLICATION)) FOR HOME CARE AIDE CERTIFICATION ((BY BOTH REQUIRED AND VOLUNTARY HOME CARE AIDES))

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

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

(2) The certification examination will test the core competencies, including but not limited to((:));

(a) Communication skills((:));

(b) Worker self-care((:));

(c) Problem solving((:));

- (d) Maintaining dignity((?));
- (e) Consumer directed care((?));
- (f) Cultural sensitivity((?));
- (g) Body mechanics((?));
- (h) Fall prevention((?));
- (i) Skin and body care((?));
- (j) Home care aide roles and boundaries((?));
- (k) Supporting activities of daily living((?)); and
- (l) Food preparation and handling.

(3) An applicant must apply (~~directly to the examination contractor~~) to take the examination by completing the application for both certification and the examination and returning it to the department. The department will notify the examination contractor once an applicant meets all requirements to take the certification examination.

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

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

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

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

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

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

(c) An applicant who does not successfully pass both portions of the certification examination within two years of successfully completing the required training or who does not successfully pass both portions of the certification examination after completing the certification examination three consecutive times:

(i) Must retake and successfully complete the core competencies portion of the entry-level training as required by RCW 74.39A.074 before retaking both portions of the certification examination; and

(ii) Cannot continue to provide care as a long-term care worker until the certification has been issued.

NEW SECTION

WAC 246-980-115 Renew or reinstate an expired certification. (1) To renew a home care aide certification the practitioner must:

(a) Renew the certification every year by the home care aide's birthday as provided in chapter 246-12 WAC, Part 2;

(b) Submit a completed application as provided by the department; and

(c) Provide verification of twelve hours of continuing education as required by RCW 74.39A.341 and WAC 246-980-110 with the renewal application.

(2) To reinstate an expired certification:

(a) If the certification has been expired for less than three years, the practitioner must submit proof of twelve continuing education hours as required by RCW 74.39A.341 and

WAC 246-980-110 for each year it has been expired, and meet the requirements of chapter 246-12 WAC, Part 2.

(b) If the certification has been expired for three years or more, the practitioner must successfully repeat the training and examination requirements in WAC 246-980-040 and meet the requirements of chapter 246-12 WAC, Part 2.

(c) A practitioner previously exempt from certification by WAC 246-980-025(2) who voluntarily chooses to be certified is not required to complete training to reinstate a certification expired over three years so long as they continue to be exempt under WAC 246-980-025(2) at the time of reapplying.

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

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

(2) In determining whether to deny certification or grant certification with conditions due to an applicant's criminal history, the department may consider, but is not limited to, the following factors:

(a) The severity of the crime as classified under law;

(b) The number of convictions and whether the applicant has exhibited a pattern of criminal conduct;

(c) The amount of time elapsed since the date of conviction or the date of offense;

(d) The amount of time the applicant has spent in the community after release from custody;

(e) Whether any conviction is listed by the department of social and health services as a disqualifying crime, including those offenses listed in RCW 43.43.830 (5), (6), or (7);

(f) Whether the applicant has complied with court-ordered conditions such as treatment, restitution, or other remedial or rehabilitative measures;

(g) Other remediation or rehabilitation by the applicant subsequent to the conviction date;

(h) Whether the applicant disclosed the conviction on the certification application; and

(i) Any other factor relating to the applicant's ability to practice as a home care aide with reasonable skill and safety.

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

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

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

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

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

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

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

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

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

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

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

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

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

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

(b) Sterile procedures;

(c) Central line maintenance;

(d) Acts that require nursing judgment.

(9) A person who is working as a long-term care worker but has not received a home care aide certification must have either ((a)) an active nursing assistant-certified or an active nursing assistant-registered credential issued by the department and comply with WAC 246-841-405 to perform delegated tasks.

AMENDATORY SECTION (Amending WSR 16-17-100, filed 8/18/16, effective 9/18/16)

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

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

(b) "Instrumental activities of daily living" means activities in the home and community including cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

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

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

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

(5) A long-term care worker may provide skills acquisition training on instrumental activities of daily living and the following activities of daily living tasks: Dressing, application of deodorant, washing hands and face, hair washing, hair combing and styling, application of makeup, menses care, shaving with an electric razor, tooth brushing or denture care, and bathing tasks excluding any transfers in or out of the bathing area.

(6) This section applies to all long-term care workers, whether required to be certified or exempt.

NEW SECTION

WAC 246-980-150 Standards of practice. (1) A long-term care worker must demonstrate behavior which maintains and respects client or resident rights and safety. This includes, but is not limited to, the following:

(a) A long-term care worker may not solicit, accept or borrow money, material or property from a client or resident. This subsection does not apply to a long-term care worker who is in an established personal relationship with the client, preexisting the provision of services, where there is no evidence of exploiting the client.

(b) A long-term care worker may not accept from a client or resident gifts of value greater than twice the current hourly minimum wage in Washington state. Gifts are limited to customary gift-giving times, such as birthdays or major holidays. This subsection does not apply to a long-term care worker who is in an established personal relationship with the client, preexisting the provision of services, where there is no evidence of exploiting the client.

(c) A long-term care worker may not accept, borrow, or take alcohol or drugs (prescription or nonprescription), including marijuana, from a client or resident.

(d) A long-term care worker may not ingest, inject, inhale, or consume in any manner any substance, including prescribed medicine, that impairs their ability to perform their job duties during the time in which they are paid to provide care.

(e) A long-term care worker may not solicit or accept a role that gives them power over a client's or resident's finances, legal matters, property, or health care decisions. This includes, but is not limited to, acting as power of attorney, legal guardian, payee, insurance beneficiary, or executor or beneficiary of a will. This subsection does not apply to a long-term care worker who is in an established personal relationship with the client, preexisting the provision of services, where there is no evidence of exploiting the client.

(f) A long-term care worker may not be the landlord for a client or resident they provide care to. This does not apply to adult family homes licensed by the department of social and health services so long as the adult family home license is active and in good standing. This section does not apply to a long-term care worker who is in an established personal relationship with the client, preexisting the provision of services, where there is no evidence of exploiting the client.

(g) A long-term care worker shall respect a client's or resident's privacy and shall not take or disseminate photos or videos of a client or resident that do not respect the client's or resident's dignity and rights. This includes, but is not limited to, social media. A long-term care worker must obtain the written permission of the client or resident, or their legal guardian, prior to taking or disseminating any photo or video of the client or resident, unless the long-term care worker is in an established personal relationship with the client, preexisting the provision of services, where there is no evidence of exploiting the client.

(2) For the purposes of this section, "landlord" means having a formal, written lease agreement between the lessor and lessee. It does not apply to situations in which cohabitants voluntarily contribute financially to household expenses without a lease agreement.

NEW SECTION

WAC 246-980-160 Sexual misconduct. A long-term care worker shall not engage in sexual misconduct as defined in WAC 246-16-100.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-980-050 How long does a nonexempt long-term care worker have to complete the home care aide training and certification requirements?
- WAC 246-980-060 How does a nonexempt home care aide renew a certification or reinstate an expired certification?
- WAC 246-980-070 Who is exempt from obtaining a home care aide certification?
- WAC 246-980-080 How does an exempt individual apply for certification as a home care aide?
- WAC 246-980-090 How does an exempt home care aide renew a home care aide certification or reinstate an expired home care aide certification?

**WSR 18-07-100
PROPOSED RULES
OFFICE OF THE
STATE TREASURER**

[Filed March 20, 2018, 3:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-176.

Title of Rule and Other Identifying Information: Adding a new rule regarding the Public Records Act (PRA): Copying fees—Payment, WAC 474-01-091.

Repealing an outdated rule regarding the PRA: Copying fees, WAC 474-01-090.

Hearing Location(s): On April 24, 2018, at 2:00 p.m., at 106 11th Avenue S.W., Olympia, WA 98504.

Date of Intended Adoption: April 24, 2018.

Submit Written Comments to: Shawn Myers, 416 Sid Snyder Avenue S.W., Room 230, P.O. Box 40200, Olympia, WA 98504, email Shawn.Myers@tre.wa.gov, fax 360-902-9037, by Friday, April 20, 2018.

Assistance for Persons with Disabilities: Contact Shawn Myers, phone 360-902-9002, fax 360-902-9037, email Shawn.Myers@tre.wa.gov, by April 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to adopt a permanent rule that implements the state legislature's new PRA requirement and provide the necessary findings so that the office of the state treasurer may use the amended statutory default fee schedule that became effective July 23, 2017, and waive copy fees under listed circumstances. The additional purpose of the rule is to continue to explain procedures for payment for copies. The office is repealing its permanent rule WAC 474-01-090, a copying fees rule adopted under prior PRA statutes.

Reasons Supporting Proposal: The PRA is chapter 42.56 RCW. The 2017 legislature amended RCW 42.56.120, section 3, chapter 304, Laws of 2017, to require that effective July 23, 2017, if an agency uses 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 office is adopting a permanent rule so it can use the statutory default copy fee schedule. In addition, RCW 42.56.120 as amended by section 3, chapter 304, Laws of 2017, allows an agency to waive any charges assessed for public records pursuant to agency rule. The office is repealing WAC 474-01-090, its copying fee rule originally adopted under former chapter 42.17 RCW because that rule is now outdated.

Statutory Authority for Adoption: RCW 42.56.100, 42.56.040 (1)(d), 42.56.120, 43.08.050.

Statute Being Implemented: RCW 42.56.120.

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

Name of Proponent: Office of the state treasurer, governmental.

Name of Agency Personnel Responsible for Drafting: Shawn Myers, Olympia, Washington, 360-902-9002.

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. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative rules [review] committee has not made the section applicable to the adoption of this 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; 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.

Is exempt under RCW 42.56.070, 42.56.120.

Explanation of exemptions: To the extent there are costs assessed by this agency for records provided in response to public records requests by small businesses, the authorized costs are set out in statute and apply to all requesters. RCW 42.56.070, 42.56.120.

March 20, 2018
Shawn D. Myers
Assistant State Treasurer

NEW SECTION

WAC 474-01-091 Copying fees—Payments. (1) The following copy fees and payment procedures apply to the office's copying of records on or after the effective date of this rule.

(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: (i) The office does not have the resources to conduct a study to determine all its actual copying costs; (ii) to conduct such a study would interfere with other essential agency functions; and, (iii) through the 2017 legislative process, the public and requesters 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). Therefore, as authorized in RCW 42.56.120, the agency shall implement a fee schedule consistent with the Public Records Act, as it is more cost efficient, expeditious and in the public interest for the agency to adopt the state legislature's approved fees and costs for most of the agency's records.

(3) The office will charge for copies of records pursuant to the default fees in 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 requester under RCW 42.56.120(4). The charges for copying methods used by the office are summarized in the fee schedule available on the office's website at www.tre.wa.gov.

(4) Requesters 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 fifty pages or fewer; 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 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requester 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 requester of when payment is due.

(7) Payment should be made by check or money order to the Office of the State Treasurer. 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 requester fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 474-01-090 Copying

WSR 18-07-104
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed March 21, 2018, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-123.

Title of Rule and Other Identifying Information: WAC 458-65A-10001 Brief adjudicative proceedings for matters related to penalties and interest imposed under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

Hearing Location(s): On April 26, 2018, at 1:00 p.m., at Conference Room 252, 6400 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: May 3, 2018.

Submit Written Comments to: Joseph Vidal, P.O. Box 47453, Olympia, WA 98504-7453, email JosephV@dor.wa.gov, fax 360-534-1606.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5717 or 360-725-7514, TTY 800-833-6384, no later than ten days before the hearing date.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to:

- Provide a brief adjudicative proceeding for matters related to whether a holder is subject to penalties and interest under chapter 63.29 RCW;
- Provide the process for the brief adjudicative proceeding; and

- Provide the appeals process from a brief adjudicative proceeding.

Reasons Supporting Proposal: To provide an expedited appeals process for matters related to the imposition of penalties and interest related to unclaimed property under chapter 63.29 RCW.

Statutory Authority for Adoption: RCW 63.29.370.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Vidal, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1576; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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 is not a significant legislative rule as defined by 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) 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.

March 21, 2018
Erin T. Lopez
Rules Coordinator

Chapter 458-65A WAC

UNCLAIMED PROPERTY

NEW SECTION

WAC 458-65A-10001 Brief adjudicative proceedings for matters related to penalties and interest imposed under the Uniform Unclaimed Property Act, chapter 63.29 RCW. (1) **Introduction.** The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 Revised Code of Washington (RCW), the Administrative Procedure Act (APA). The department will use a brief adjudicative proceeding as provided in RCW 34.05.482 through 34.05.494 to determine the following issues:

(a) Whether a holder is liable for accrued interest for failure to pay or deliver property to the department (RCW 63.29.340(1));

(b) Whether a holder is subject to the ten percent penalty for failure to timely file a report or pay or deliver any amounts or property due under a report (RCW 63.29.340(2));

(c) Whether a holder is subject to the ten percent penalty for an assessment following an examination, of amounts unpaid or property not delivered (RCW 63.29.340(3));

(d) Whether a holder is subject to the five percent penalty for failure to timely pay or deliver property due under an assessment (RCW 63.29.340(4)); and

(e) Whether a holder is subject to the five percent penalty for failing to electronically file a report or pay electronically (RCW 63.29.340(7)).

(2) **Multiple penalties.** The assessment of more than one type of penalty against a holder will be determined in a single brief adjudicative proceeding if those penalties were assessed in the same notice of assessment.

(3) **Holder defined.** Holder, as applied throughout this rule means a person obligated to report, or to deliver, property that is subject to chapter 63.29 RCW, the Uniform Unclaimed Property Act of 1983.

(4) **Record in brief adjudicative proceedings.** The record with respect to a holder's petition for review per RCW 34.05.482 through 34.05.485 will consist of:

(a) The holder's unclaimed property report and electronic confirmation of report (RCW 63.29.170);

(b) Application for penalty and interest waiver (RCW 63.29.340 and 63.29.191);

(c) Application for refund of property, interest, or penalty (RCW 63.29.192);

(d) The holder's unclaimed property petition for review (RCW 63.29.193);

(e) Request for relief from electronic filing and payment requirements (RCW 63.29.170 (5)(a) and 63.29.190 (1)(a));

(f) Department's letter of denial for refund or return of property (RCW 63.29.193); and

(g) All correspondence between the holder and the department regarding the penalty, interest, or refund in question.

(5) **Conduct of brief adjudicative proceedings.**

(a) If the department assesses penalties and interest under chapter 63.29 RCW, it will notify the holder of the penalties and interest in writing and state the reason for the penalties and interest. To initiate a review of the department's assessment of penalties and interest, the holder must file a written petition for review no later than thirty days after service of the department's written notice that the holder has been assessed penalties and interest. See RCW 63.29.193.

(b) A form notice of petition for review is available at dor.wa.gov or by calling 1-800-647-7706. The completed form must be mailed, emailed, or faxed to the department at:

Mail:

Washington State Department of Revenue
Special Programs, Unclaimed Property Section
P.O. Box 47477

Olympia, WA 98504-7477

Email: UCP@dor.wa.gov

Fax: 360-534-1498

(c) At the time the petition is filed, the holder must submit to the special programs, unclaimed property section, all arguments and any evidence or written material relevant to the matter that the party wishes the presiding officer to consider. No witnesses may offer testimony.

(d) A presiding officer, who will be the unclaimed property operations manager of the special programs division or such other person as designated by the director of the depart-

ment, will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the assessment of penalties on the holder.

(e) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis in making a decision.

(f) Within twenty-one days of receipt of the holder's petition for review, the presiding officer will enter an initial order, including a brief explanation of the decision per RCW 34.05.485. All orders will be in writing. The initial order will become the department's final order unless a timely petition for review is filed with the department's administrative review and hearings division as provided in subsection (6) of this rule.

(6) Review of initial orders from brief adjudicative proceeding.

(a) A holder may request a review by the department of an initial order issued per subsection (5) of this rule by filing a written petition for review with the department's administrative review and hearings division within twenty-one days of service of the initial order on the holder. See RCW 34.05.-488. At the time the petition is filed, the holder must submit to the administrative review and hearings division all arguments and any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider.

(b) An unclaimed property petition for review of an initial order per subsection (5) of this rule is available at dor.wa.gov. The petition must be sent to one of the following:

Mail:

Washington State Department of Revenue
Administrative Review and Hearings Division
P.O. Box 47460
6400 Linderson Way S.W.
Olympia, WA 98504-7460
Email: DORARHDadmin@dor.wa.gov
Fax: 360-534-1340

(c) A reviewing officer, who will be either the assistant director of the administrative review and hearings division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the department's initial order issued per subsection (5) of this rule was correctly based on the criteria set forth in RCW 63.29.-340. The reviewing officer will review the record and, if needed, convert the proceeding to a formal adjudicative proceeding in accordance with subsection (7) of this rule.

(d) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(e) The reviewing officer will issue a written order that includes a brief statement of the reasons for the decision, within twenty days of the date the petition for review was filed. The order will include a notice that judicial review may be available. The order of the reviewing officer represents the final decision of the department.

(f) A request for review is deemed denied if the department does not issue an order on review within twenty days after the petition for review is filed, unless a continuance is

issued under subsection (11) of this rule. See RCW 34.05.491(5).

(7) Conversion of a brief adjudicative proceeding to a formal proceeding. The presiding officer or reviewing officer may convert the brief adjudicative proceeding to a formal proceeding at any time on motion of the holder, the department, or the presiding or reviewing officer's own motion.

(a) The presiding or reviewing officer will convert the proceeding when it finds that the use of the brief adjudicative proceeding violates any provision of law, the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the holder and department, or when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.-479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the reviewing officer or may designate a replacement reviewing officer to conduct the formal proceedings upon notice to the holder and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002(2) will apply to the proceedings.

(8) Court appeal.

(a) A holder may appeal a final order of the department under Part V, chapter 34.05 RCW, when a review of the initial decision has been requested under subsection (6) of this rule and all other administrative remedies have been exhausted. See RCW 34.05.534.

(b) A holder who has already paid or delivered property to the department may appeal directly to the superior court of Thurston County for a refund of such payment or property instead of appealing to the department. See RCW 63.29.194.

(9) Computation of time. In computing any period of time prescribed by this rule, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation. Service as discussed in subsection (10) of this rule is deemed complete upon mailing.

(10) Service. All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the holder, their representatives/agents of record, and the department's representative.

(a) Service is made by one of the following methods:

- (i) In person;
- (ii) By first-class, registered or certified mail;
- (iii) By fax and same-day mailing of copies;
- (iv) By commercial parcel delivery company; or
- (v) By electronic delivery.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a holder and to their representative/agent of record must be to the address(es) shown on the petition for review.

(g) Service to the department's representative and to the presiding officer must be to the special programs division unclaimed property section at the address shown in subsection (5) of this rule.

(h) Service to the reviewing officer must be to the administrative review and hearings division at the address shown in subsection (6) of this rule.

(i) Where proof of service is required, the proof of service must include a certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy to (names); and that the service was accomplished by a method of service as provided in this subsection.

(j) Failure to serve documents on all parties of record in the proceeding in a manner prescribed by this subsection will result in an unlawful ex parte contact. An ex parte contact cannot constitute evidence of any fact at issue in the matter unless the party complies with RCW 34.05.455(5).

(11) **Continuance.** The presiding officer or reviewing officer may grant a request for a continuance by motion of the holder, the department, or on its own motion.

WSR 18-07-105

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed March 21, 2018, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-036.

Title of Rule and Other Identifying Information: Amending chapter 82-75 WAC related to the statewide all-payer health care claims database. Specifically, the rules will address the procedures for establishing appropriate fees.

Hearing Location(s): On April 24, 2018, at 9:30 a.m., at 302 Sid Snyder Avenue S.W., Fourth Floor, Room 440, Olympia, WA 98501.

Date of Intended Adoption: May 1, 2018.

Submit Written Comments to: Thea Mounts, 106 11th Avenue S.W., P.O. Box 43124, Olympia, WA 98504, email apcd@ofm.wa.gov, by April 24, 2018.

Assistance for Persons with Disabilities: Contact office of financial management (OFM), phone 360-902-3092, TTY 360-753-4107, email hayden.mackley@ofm.wa.gov, by April 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule is to establish the procedures that need to be followed by the lead organization in appropriate fees for data from the Washington all-payer claims database. The rule ensures review by the appropriate advisory committee and OFM, as well as providing transparency for the process.

Reasons Supporting Proposal: Chapter 43.371 RCW directs OFM to establish a statewide all-payer health care claims database to support transparent public reporting of health care information. To accomplish this requirement, OFM is further directed to select a lead organization to coordinate and manage the database. RCW 43.371.070 (1)(f) provides that the OFM director shall adopt rules necessary to implement this chapter including the procedures for establishing appropriate fees.

Statutory Authority for Adoption: RCW 43.371.070 (1)(f).

Statute Being Implemented: Chapter 43.371 RCW.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting: Roselyn Marcus, Insurance Building, Olympia, Washington, 360-902-0434; Implementation and Enforcement: Thea Mounts, Helen Sommers Building, Olympia, Washington, 360-902-0552.

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. OFM is not a listed agency in 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.

March 21, 2018

Roselyn Marcus

Assistant Director for

Legal and Legislative Affairs

FEE SCHEDULES

NEW SECTION

WAC 82-75-550 Requirement for fee schedules and processes. (1) RCW 43.371.020 (5)(g) requires the lead organization to develop a plan for the financial sustainability of the database, and charge fees for reports and data files to fund the database.

(2) The office must approve any fee established by the lead organization.

(3) RCW 43.371.070 requires the office to establish by rule, procedures for the lead organization to establish these statutorily required fees.

(4) The process to develop, review and approve fee schedules will be open and transparent, and allow for stakeholder feedback.

NEW SECTION**WAC 82-75-560 Process to establish fee schedules.**

(1) The lead organization must develop a draft fee schedule consistent with the requirements in RCW 43.371.020 (5)(g). The lead organization must maintain documentation that supports the development of and final decisions regarding the fee schedule.

(2) The lead organization must present the draft fee schedule and supporting documentation to the data policy committee for review and feedback. The lead organization must provide any other available data requested by the DPC that supports the development and draft fee schedule presented.

(3) The DPC must review the draft fee schedule, supporting documentation, and adopt recommendations, including the basis for each recommendation, as to whether the fee schedule should be approved by the office. The DPC must provide the recommendations to the lead organization for its consideration.

(4) The lead organization must review the DPC recommendations and make any changes to the draft fee schedule based on the recommendations. The lead organization must document which recommendations it implemented into the fee schedule. For those recommendations that the lead organization did not act upon, the lead organization must document the reasons why each recommendation was not accepted.

(5) The lead organization must provide the office the draft fee schedule, as modified, supporting documentation, the DPC recommendations, and the reasoning for why the lead organization did not make changes for any recommendation not accepted. The lead organization must also provide any other available data requested by the office that supports the development and draft fee schedule provided to the office.

(6) The office shall post on the agency web site the draft fee schedule, and solicit public comment for thirty days. The office may also convene a stakeholder meeting to provide an opportunity for interested parties another avenue to give feedback on the draft fee schedule. If the office decides to hold a stakeholder meeting, the meeting may be in person, by telephone or other electronic means, as determined by the office.

After the comment period, the office will review all the stakeholder feedback, recommendations of the DPC, and any data received from the lead organization and make a final determination regarding the fee schedule. The office shall provide the final determination to the lead organization, publish the final determination on the agency web site, and send notification through the office listserv or other electronic means.

NEW SECTION**WAC 82-75-570 Process to modify fee schedules. (1)**

Fee schedules shall be reissued no less frequently than on an annual basis. The reissuance of the fee schedule can include maintaining the fee schedule without modification, modifying the fee schedule, or a combination of these two actions.

(2) The lead organization shall review fee schedules at least once every year. Annual period shall be from the date upon which the fee schedule is adopted. The review shall include whether any fee should be changed, removed from the schedule, or new fees added. The lead organization must maintain documentation that supports the recommended changes from the review of the fee schedule.

(3) The lead organization must present the changes, supporting documentation, and proposed modifications to the fee schedule to the data policy committee for review and feedback. The lead organization must provide any other available data requested by the DPC that supports the proposed modifications to the fee schedule.

(4) The DPC must review the changes, supporting documentation, and proposed modifications to the fee schedule and adopt recommendations, including the basis for each recommendation, as to whether the changes should be accepted and the modified fee schedule approved by the office. The DPC must provide the recommendations to the lead organization for its consideration.

(5) The lead organization must review the DPC recommendations and make any changes to the recommendations and proposed modifications to the fee schedule based on the recommendations. The lead organization must document which recommendations it implemented into the fee schedule. For those recommendations that the lead organization did not act upon, the lead organization must document the reasons why each recommendation was not accepted.

(6) The lead organization must provide the office the proposed modifications to the fee schedule, as modified, with supporting documentation, the DPC recommendations, and the reasoning for why the lead organization did not make changes for any recommendation not accepted. The lead organization must provide any other available data requested by the office that supports the changes and proposed modified fee schedule provided to the office.

(7) The office shall post on the agency web site the recommendations and proposed modifications to the fee schedule, and solicit public comment for thirty days. The office may also convene a stakeholder meeting to provide an opportunity for interested parties another avenue to give feedback on the draft fee schedule. If the office decides to hold a stakeholder meeting, the meeting may be in person, by telephone or other electronic means, as determined by the office.

(8) After the comment period, the office will review all the stakeholder feedback, recommendations of the DPC, and any data received from the lead organization and make a final determination regarding the fee schedule. The office shall provide the final determination to the lead organization, publish the final determination on the agency web site, and send notification through the office listserv or other electronic means.

WSR 18-07-106
PROPOSED RULES
DEPARTMENT OF HEALTH
 (Board of Physical Therapy)
 [Filed March 21, 2018, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-02-054.

Title of Rule and Other Identifying Information: Chapter 246-915 WAC, Physical therapists and physical therapist assistants, the board of physical therapy (board) is proposing chapter amendments to incorporate current minimum standards of care as well as propose general updates, revisions, and housekeeping amendments.

Hearing Location(s): On April 30, 2018, at 10:00 a.m., at the Department of Health, Creekside Two at CenterPoint, 20425 72nd Avenue South, Suite 310, Room 307, Kent, WA 98031.

Date of Intended Adoption: April 30, 2018.

Submit Written Comments to: Kris Waidely, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 16, 2018.

Assistance for Persons with Disabilities: Contact Kris Waidely, program manager, phone 360-236-4847, fax 360-236-2901, TTY 360-833-6388 or 711, email kris.waidely@doh.wa.gov, by April 16, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update chapter 246-915 WAC to align with current minimum standards for physical therapists (PT) and physical therapist assistants (PTA). In addition, proposed amendments comply with recent statutory requirements. RCW 43.70.041 requires the department of health to review all of its existing rules every five years to streamline processes, decrease the number of rules, simplify the process, and decrease the time required for obtaining licenses, permits, and inspections, as applicable, in order to reduce the regulatory burden on businesses without compromising public health and safety. A comprehensive review of the chapter by the board was completed in response to this legislative directive. The proposal is responsive to this statute's intent in that the board reviewed the chapter in its entirety, and developed amendatory language to clarify and simplify existing rules wherever possible. Redundant sections are proposed to be repealed, as well, and RCW 18.340.020 requires health profession disciplining authorities establish procedures to expedite temporary practice permits for military spouses, which the board is also proposing. Finally, the board is proposing general updates and housekeeping items.

Reasons Supporting Proposal: The purpose of chapter 18.74 RCW is to protect the public health, safety, and welfare and to provide for state administrative control, supervision, licensure, and regulation of the practice of physical therapy. It is the intent of the legislature that only individuals who meet and maintain prescribed standards of competence and conduct be allowed to engage in the practice of physical therapy as defined and authorized by this chapter. Reasons supporting the proposal are to: (1) Ensure PTs and PTAs clearly understand required standard of care and current minimum

standards in order to proactively protect patients in Washington state; and (2) ensure compliance with statutory requirements.

Statutory Authority for Adoption: RCW 18.74.023.

Statute Being Implemented: Chapter 18.74 RCW, RCW 18.340.020.

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

Name of Proponent: Board of physical therapy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kris Waidely, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4847.

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 Kris Waidely, Program Manager, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4847, fax 360-236-2901, TTY 360-833-6388 or 711, email kris.waidely@doh.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. The proposed rules do not impact businesses.

March 21, 2018
 Blake T. Maresh
 Executive Director

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-010 Definitions. ~~((For the purposes of this chapter and administering chapter 18.74 RCW, the following words and phrases have the following meanings:~~

~~(1) The "performance of tests of neuromuscular function" includes the performance of electroneuromyographic examinations.~~

~~((2))~~ The definitions in this section apply throughout this chapter unless the context indicates otherwise:

(1) "Board" means the Washington state board of physical therapy.

(2) "CAPTE" means the commission on accreditation for physical therapy education.

(3) "Consultation" means a communication regarding a patient's evaluation and proposed treatment plan with an authorized health care practitioner.

~~((3))~~ "Supervisor" means the licensed physical therapist.)

(4) "Department" means the Washington state department of health.

(5) "Direct supervision" means the supervisor must:

(a) Be continuously on-site and present where the person being supervised is performing services;

(b) Be immediately available to assist the person being supervised in the services being performed; and

(c) Maintain continued involvement in appropriate aspects of each treatment session in which a component of

treatment is delegated to assistive personnel or is required to be directly supervised under RCW 18.74.180.

(6) "Indirect supervision" means the supervisor is not on the premises, but has given either written or oral instructions for treatment of the patient and the patient has been examined by the physical therapist at such time as acceptable health care practice requires, and consistent with the particular delegated health care task.

(7) "NPTE" means the National Physical Therapy Examination.

(8) "Other assistive personnel" means other trained or educated health care personnel, not defined in (a) or (b) of this subsection, who perform specific designated tasks related to physical therapy under the supervision of a physical therapist including, but not limited to, licensed massage therapists, athletic trainers, and exercise physiologists. At the direction of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, other assistive personnel may be identified by the title specific to their training or education.

(9) "Physical therapist" means a person who meets all the requirements of this chapter and is licensed as a physical therapist under chapter 18.74 RCW.

(10) "Sharp debridement" means the removal of devitalized tissue from a wound with scissors, scalpel, and tweezers without anesthesia. Sharp debridement does not mean surgical debridement.

(11) "Spinal manipulation" includes spinal manipulation, spinal manipulative therapy, high velocity thrust maneuvers, and grade five mobilizations of the spine and its immediate articulations.

(12) "Trained supportive personnel" means:

(a) "Physical therapist assistant." An individual who meets all the requirements of this chapter and is licensed as a physical therapist assistant and who performs physical therapy procedures and related tasks that have been selected and delegated only by the supervising physical therapist ~~((However, a physical therapist may not delegate sharp debridement to a physical therapist assistant))~~; or

(b) "Physical therapy aide." An individual who is involved in direct physical therapy patient care who does not meet the definition of a physical therapist or physical therapist assistant and receives ongoing on-the-job training.

~~((5) "Direct supervision" means the supervisor is on the premises, is quickly and easily available and the patient has been examined by the physical therapist at such time as acceptable physical therapy practice requires, consistent with the delegated health care task.~~

~~(6) "Indirect supervision" means the supervisor is not on the premises, but has given either written or oral instructions for treatment of the patient and the patient has been examined by the physical therapist at such time as acceptable health care practice requires, and consistent with the particular delegated health care task.~~

~~(7) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.~~

~~(8) "Office on AIDS" means the section within the department of social and health services or any successor~~

~~department with jurisdiction over public health matters as defined in chapter 70.24 RCW.~~

~~(9) "Spinal manipulation" or "manipulative mobilization" means movement beyond the normal physiological range of motion.~~

~~(10) "Patient reevaluation" means the licensed physical therapist must physically observe and interview the patient.)~~

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-020 Physical therapist and physical therapist assistant examinations—Prior to graduation.

(1) Physical therapy students in their last year of education may apply for licensure by examination prior to graduation ~~((under the following circumstances:~~

~~(a) Receipt of) if the department receives a letter from an official((, of their)) of the student's physical therapy school((;)) verifying the probability of graduation prior to the date of the examination for which they are applying. Students may apply to take the exam up to one hundred fifty days prior to graduation.~~

~~((b) Results of the examination will be withheld)) (2) The department will not issue a credential until:~~

~~(a) A diploma, official transcript or certification letter from the registrar's office certifying completion of all requirements for degree or certificate in physical therapy is received by the department; and~~

~~(b) A passing NPTE score is received by the department.~~

~~((2) Applicants who do not pass the examination after two attempts shall demonstrate evidence satisfactory to the board of having successfully completed clinical training and/or course work as determined by the board before being permitted two additional attempts.))~~

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-030 Examination. ~~((+))~~ The examination acceptable to and approved for use under the provisions of RCW 18.74.035 ~~((shall be the examination))~~ is the National Physical Therapy Examination (NPTE).

(1) For a physical ~~((therapists and physical therapist assistants as reviewed and approved by the board of physical therapy. A passing score is considered to be one of the following:~~

~~(a) Beginning November 8, 1995, the criterion referenced passing point recommended by the Federation of State Boards of Physical Therapy for the examination approved by the board. The passing point shall be set to equal a scaled score of 600 based on a scale ranging from 200 to 800.~~

~~(b) Beginning February 28, 1991, through July 12, 1995, not less than sixty-eight percent of the raw score for the examination approved by the board; or~~

~~(c) Prior to February 28, 1991, not less than sixty percent raw score on each of the three examination parts for the examination approved by the board.~~

~~(2) If a candidate fails to receive a passing score on the examination, he or she will be required to retake the examination.~~

(3) Where necessary, applicant's score will be rounded off to the nearest whole number.) a passing score is considered to be one of the following:

(a) Beginning November 8, 1995, the criterion referenced passing point shall be set to equal a scaled score of 600 based on a scale ranging from 200 to 800.

(b) Beginning February 28, 1991, through July 12, 1995, not less than sixty-eight percent of the raw score.

(c) Prior to February 28, 1991, not less than sixty percent raw score on each of the three examination parts.

(2) For a physical therapist assistant a passing score is considered to be one of the following:

(a) Beginning November 8, 1995, the criterion referenced passing point shall be set to equal a scaled score of 600 based on a scale ranging from 200 to 800.

(b) Prior to November 8, 1995, a passing score is answering correctly seventy percent of the total number of questions.

(3) If a physical therapist or physical therapist assistant candidate fails to receive a passing score, he or she will be required to retake the NPTE.

(4) The department will issue a license by endorsement to an applicant who is currently licensed as a physical therapist or physical therapist assistant under the laws of another state provided the requirements for registration or licensure under the appropriate category in that state, including minimal education and passing score on the NPTE were reasonably equal to the requirements in force in this state on the date of the applicant's initial licensure in the other state.

(5) An applicant may take the NPTE a maximum of six times, except that applicants who receive two very low scores on the exam will not be allowed to test again. A very low score is defined as performing at or below chance level (scale score four hundred and below).

NEW SECTION

WAC 246-915-039 Initial eligibility and application requirements. (1) An applicant for physical therapist license must submit to the department:

(a) A completed application;

(b) The application and licensing fees required under WAC 246-915-990;

(c) An official transcript from CAPTE; and

(d) Verification of passing NPTE scores.

(2) An applicant for physical therapist assistant license must submit to the department:

(a) A completed application;

(b) The application and licensing fees required under WAC 246-915-99005;

(c) An official transcript from CAPTE; and

(d) Verification of passing NPTE scores.

AMENDATORY SECTION (Amending WSR 05-06-022, filed 2/22/05, effective 3/25/05)

WAC 246-915-040 Licensure by endorsement~~((— Applicants from approved schools))~~. (1) ~~((Before licensure by endorsement is extended to any individual licensed to practice physical therapy under the law of another state, territory, or District of Columbia, the applicant shall have gradu-~~

~~ated from a board approved school, shall have taken the examination for physical therapy and shall have achieved a passing score approved by the board.))~~ An applicant for licensure as a physical therapist or physical therapist assistant who is currently registered, certified, or licensed under the laws of another state or territory, or the District of Columbia, with substantially equal requirements of this chapter must file an application and submit to the department:

(a) Documentation verifying graduation from a board approved school as described in WAC 246-915-100 and 246-915-105; and

(b) Verification of passing NPTE scores as described in WAC 246-915-030.

(2) ~~((the decision to extend licensure by endorsement is based on))~~ the applicant took an examination other than the ((examination approved in WAC 246-915-030(1))) NPTE, the board shall determine if such examination is equivalent to that required by the laws of this state.

(3) ~~((The board shall not recommend to the secretary that a person be licensed as a physical therapist under the licensure by endorsement provisions of RCW 18.74.060, unless said applicant shall have taken and passed the examination approved by the board, or other examination equivalent to that required by the laws of this state.~~

(4)) ~~((a licensee))~~ an applicant has not ((worked in physical therapy)) been actively engaged in lawful practice in another state, territory, or District of Columbia in the last three years, the applicant may be granted licensure by endorsement under the following conditions:

(a) The board may require reexamination of ((an)) the applicant ((who has not been actively engaged in lawful practice in another state or territory)); or

(b) The board may waive reexamination in favor of evidence of continuing competency satisfactory to the board.

(4) If the applicant has not been actively engaged in lawful practice in another state, territory, or District of Columbia in the last five years or longer, the applicant may be granted licensure by endorsement under the following conditions:

(a) The applicant completes the continuing competency requirements found in WAC 246-915-085; and

(b) The applicant retakes and passes the NPTE.

AMENDATORY SECTION (Amending WSR 05-03-009, filed 1/6/05, effective 2/6/05)

WAC 246-915-050 ~~((Reinstatement.))~~ **Reactivation of expired credential.** To reactivate an expired license:

(1) If the license has expired for ((three years)) one renewal cycle or less, the ((practitioner)) applicant must meet the applicable requirements of chapter 246-12 WAC, Part 2.

(2) If the license has expired for ((over)) more than one renewal cycle but less than three years, and the ((practitioner)) applicant has been in active practice in another United States jurisdiction, the ((practitioner)) applicant must:

(a) Submit verification of active practice from ((any)) the other United States jurisdiction; and

(b) Meet the applicable requirements of chapter 246-12 WAC, Part 2.

(3) If the license has expired for ((over)) more than three years but less than five years, and the ((practitioner)) appli-

cant has not been in active practice in another United States jurisdiction, the practitioner must meet the applicable requirements of chapter 246-12 WAC, Part 2. ((Before recommending reinstatement, the board may require reexamination and may impose any other requirements necessary to ensure professional competence and protect the public.))

(4) If the license has expired for five years or more, and the applicant has not been in active practice in another United States jurisdiction, the applicant must meet applicable requirements of chapter 246-12 WAC, Part 2, and retake and pass the NPTE.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-075 Temporary permit((s—Issuance and duration))—National background checks. ((+) Unless there is a basis for denial of a physical therapist or physical therapist assistant license, an applicant who is licensed in another jurisdiction shall be issued a temporary practice permit after receipt of the following documentation by the department of health:

(a) Submission of a completed physical therapist or physical therapist assistant license application on which the applicant indicates that he or she wishes to receive a temporary practice permit;

(b) Payment of the application fee;

(c) Submission of all required supporting documentation as described in the application forms and instructions provided by the department of health, excepting the seven-hour AIDS education requirement as described in WAC 246-915-110.

(2) Applicants wishing to receive a temporary practice permit shall be granted an additional ninety days to complete the AIDS education requirement; however, issuance of a physical therapist or physical therapist assistant license is contingent upon evidence of having met this requirement.

(3) The temporary permit shall expire upon the issuance of a license by the board; initiation of an investigation by the board of the applicant; or ninety days, whichever occurs first.

(4) An applicant who receives a temporary practice permit and who does not complete the application process may not receive additional temporary practice permits even upon submission of a new application in the future.)) Fingerprint-based background checks may cause a delay in licensing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary permit while the national background check is completed.

(1) A temporary permit may be issued to an applicant who:

(a) Holds an unrestricted, active license in another state or that has substantially equivalent licensing standards for the same profession as those in Washington;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington.

(2) A temporary permit grants the individual the full scope of practice for the profession.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license;

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required;

(c) Provide verification of having an active unrestricted license in the same profession from another state that has substantially equivalent licensing standards for the profession in Washington; and

(d) Submit to the department the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

NEW SECTION

WAC 246-915-076 Temporary practice permit—Military spouse. A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for the profession by meeting the procedural requirements found in WAC 246-12-051.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-078 Interim permits. ((An applicant who has not previously taken the physical therapy examination or an applicant who has not previously held an interim or temporary permit in Washington or another state, may be eligible for an interim permit under RCW 18.74.075 upon submission of the following:

(1) Payment of the application fee;

(2)) (1) The department, upon approval by the board, will issue an interim permit authorizing an applicant for licensure who meets the minimum qualifications stated in RCW 18.74.030 to practice physical therapy under graduate supervision pending notification of the results of the first licensure examination for which the applicant is eligible. The duration of an interim permit must not exceed six months from the date of issuance.

(2) For purposes of this section, "graduate supervision" means supervision of a holder of an interim permit by a licensed physical therapist who is on the premises at all times. Graduate supervision must include consultation regarding evaluation, treatment plan, treatment program, and progress of each assigned patient at appropriate intervals and be documented by cosignature of notes by the licensed phys-

ical therapist. RCW 18.74.012 is not applicable for holders of interim permits.

~~(3) If the holder of the interim permit fails the NPTE, the permit expires upon notification and is not renewable.~~

~~(4) To obtain an interim permit, an applicant must submit the following:~~

~~(a) Evidence of having obtained a physical therapy degree from a board approved school as stated in WAC 246-915-100 and 246-915-105;~~

~~((3)) (b) A completed ((a)) physical therapist or physical therapist assistant license application ((on which the applicant:~~

~~(a) Requests to receive an interim permit;~~

~~(b) Provides)); and~~

~~(c) The application fee under WAC 246-915-990 or 246-915-99005.~~

~~(5) The applicant must also submit a completed department-approved interim permit sponsor form that provides:~~

~~(a) The name, location and telephone number of his or her place of employment;~~

~~((e) Provides)) (b) The name and license number of his or her ((licensed)) supervising physical therapist; and~~

~~((d) Provides)) (c) Written confirmation from the ((licensed)) supervising physical therapist attesting that he or she will:~~

~~(i) ((Ensure that a licensed physical therapist will)) Remain on the premises at all times to provide "graduate supervision" as specified in RCW 18.74.075;~~

~~(ii) Report to the board any change in supervision or any change in location where services are provided within ten business days of the change;~~

~~(iii) Ensure that the holder of the interim permit wears identification showing his or her clinical title ((and/or)) and role in the facility as a graduate physical therapist or physical therapist assistant; and~~

~~(iv) Ensure that the holder of the interim permit ceases practice immediately upon notification of ((examination failure)) failing the NPTE; or~~

~~(v) Ensure that the holder of the interim permit obtains his or her physical therapist or physical therapist assistant license immediately upon notification of having passed the ((examination)) NPTE.~~

AMENDATORY SECTION (Amending WSR 15-14-093, filed 6/29/15, effective 7/1/15)

WAC 246-915-085 Continuing competency.

~~((Licensed physical therapists and physical therapist assistants must provide evidence of continuing competency in the form of continuing education and employment related to physical therapy every two years.~~

~~(1) Licensed physical therapists and physical therapist assistants must complete 40 hours of continuing education every two years.~~

~~(2) Physical therapists and physical therapist assistants are required to complete a one-time training in suicide assessment that includes screening and referral elements appropriate for this profession. The training must be at least three hours in length and must meet the requirements for training per WAC 246-915-086.~~

A physical therapist or physical therapist assistant must complete a one-time training by the end of the first full continued competency reporting period after January 1, 2016, or during the first full continued competency reporting period after initial licensure, whichever is later. Training completed between June 12, 2014, and January 1, 2016, that meets the requirements of this section will be accepted as meeting the one-time training requirements.

~~(3) Acceptable continuing education specifically relating to the practice of physical therapy includes, but is not limited to, the following:~~

~~(a) Participation in a course with specific goals and objectives relating to the practice of physical therapy;~~

~~(b) Audio or video recordings or other multimedia devices, and/or book/article review. A maximum of ten hours may be used for books/articles reviewed;~~

~~(c) Correspondence course work completed.~~

~~(4) A physical therapist with a spinal manipulation endorsement must complete at least ten hours of continuing education per continuing competency reporting period directly related to spinal manipulation. At least five hours of the training must be related to procedural technique and application of spinal manipulation.~~

~~(5) In addition to the required continuing education hours, physical therapists and physical therapist assistants must complete 200 hours involving the application of physical therapy knowledge and skills, which may be obtained as follows:~~

~~(a) In the clinical practice of physical therapy; or~~

~~(b) In nonclinical activities that involve the direct application of physical therapy skills and knowledge, examples of which include, but are not limited to:~~

~~(i) Active service on boards or in physical therapy school or education program accrediting bodies;~~

~~(ii) Physical therapy teaching or presentations on:~~

~~(A) Patient/client management, prevention and wellness;~~

~~(B) Physical therapy ethics and standards of practice;~~

~~(C) Professional advocacy/involvement;~~

~~(iii) Developing course work in physical therapy schools or education programs or physical therapy continuing education courses;~~

~~(iv) Physical therapy research as a principal or associate researcher; and~~

~~(v) Physical therapy consulting.~~

~~(6) Licensed physical therapists and physical therapist assistants shall maintain records of all activities relating to continuing education and professional experience for a period of four years. Acceptable documentation shall mean:~~

~~(a) Continuing education. Certificates of completion, course sponsors, goals and objectives of the course, credentials of the presenter as a recognized authority on the subject presented, dates of attendance and total hours, for all continuing education being reported.~~

~~(b) Audio or video recordings or other multimedia devices, and/or book/article review. A two-page synopsis of each item reviewed must be written by the licensee.~~

~~(i) For audio or video recordings or other multimedia devices, a two-page double-spaced synopsis for every one to four hours of running time must be written by the licensee. Time spent writing a synopsis is not reportable.~~

(ii) For book/article review, a two-page double-spaced synopsis on each subject reviewed must be written by the licensee. Time spent writing a synopsis is not reportable.

(e) Correspondence course work completed. Course description and/or syllabus and copies of the completed and scored examination must be kept on file by the licensee.

(d) Physical therapy employment. Certified copies of employment records or proof acceptable to the board of physical therapy employment for the hours being reported-)) (1) Every two years, a physical therapist must complete thirty-two hours of continuing education through any of the following means:

	<u>CE Type</u>	<u>Maximum Hours Allowed</u>	<u>Documentation Requirements</u>
a.	<u>Participation in a course, live or online.</u>	<u>No limit</u>	<u>Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.</u>
b.	<u>Live or recorded instructional electronic media that does not include specific goals and objectives relating to the practice of physical therapy.</u>	<u>Four hours</u>	<u>Instead of course goals, objectives and certificate of completion, the licensee must write and submit to the department a one-page synopsis in twelve-point font for each hour of running time.</u>
c.	<u>Books or articles reviewed.</u>	<u>Eight hours (reading time only)</u>	<u>The licensee must write and submit to the department a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.</u>
d.	<u>Preparation and presentation of professional physical therapy courses or lectures.</u>	<u>Ten hours</u>	<u>The licensee must submit to the department an outline of presentation materials, date, and location of presentation.</u>
e.	<u>Written publication of original scholarly research or work published in a peer-review journal.</u>	<u>Ten hours</u>	<u>The licensee must submit to the department proof of publication which may include poster presentations.</u>

	<u>CE Type</u>	<u>Maximum Hours Allowed</u>	<u>Documentation Requirements</u>
f.	<u>Clinical instruction of physical therapist students enrolled in a physical therapy program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).</u>	<u>Ten hours for each thirty-two hours of student mentorship equaling one hour for purposes of CE credit.</u>	<u>The licensee must obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction.</u>
g.	<u>Completion of Option, which is a self-assessment tool created by the Federation of State Boards of Physical Therapy.</u>	<u>Five hours</u>	<u>The licensee must submit a copy of the completion certificate to the department.</u>
h.	<u>Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the licensee's competence.</u>	<u>One quarter credit is equal to ten hours; one trimester credit is equal to twelve hours; and one semester credit is equal to fifteen hours.</u>	<u>The licensee must submit a transcript to the department verifying courses taken.</u>
i.	<u>Participation in the use of the Federation of State Boards of Physical Therapy's aptitude continuing competence resource.</u>	<u>Two hours</u>	<u>The licensee must submit verification of completion by FSBPT.</u>

(2) Every two years a physical therapist who holds a spinal manipulation endorsement must complete at least ten hours of continuing education directly related to spinal manipulation with at least five hours related to procedural techniques and application of spinal manipulation. For documentation, refer to the documentation required for the particular type of CE chosen. The hours spent completing spinal manipulation continuing education count toward meeting any applicable continuing competency requirements.

(3) Every two years, a physical therapist assistant must complete twenty-four hours of continuing education through any of the following means:

	<u>CE Type</u>	<u>Hours Allowed</u>	<u>Documentation Requirements</u>
a.	Participation in a course, live or online.	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.
b.	Live or recorded instructional electronic media that does not include specific goals and objectives relating to the practice of physical therapy.	Four hours	Instead of course goals, objectives and certificate of completion, the licensee must write and submit a one-page synopsis in twelve-point font for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The licensee must write and submit a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	Ten hours	The licensee must submit an outline of presentation materials, date, and location of presentation.
e.	Written publication of original scholarly research or work published in a peer-review journal.	Ten hours	The licensee must submit proof of publication which may include poster presentations.
f.	Clinical instruction of physical therapist assistant students enrolled in a physical therapy assistant program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical	Ten hours	The licensee must obtain and submit a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction.

	<u>CE Type</u>	<u>Hours Allowed</u>	<u>Documentation Requirements</u>
	Therapy Residency and Fellowship Education (ABPTRFE).		
g.	Completion of Option, which is a self-assessment tool created by the Federation of State Boards of Physical Therapy.	Five hours	The licensee must submit a copy of the completion certificate.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the licensee's competence.	One quarter credit is equal to ten hours; one trimester credit is equal to twelve hours; and one semester credit is equal to fifteen hours.	The licensee must submit a transcript verifying courses taken.
i.	Participation in the use of the Federation of State Boards of Physical Therapy's aptitude continuing competence resource.	Two hours	The licensee must submit verification of completion by FSBPT.

(4) Each physical therapist and physical therapist assistant must complete a one-time, three hour suicide assessment training described in WAC 246-915-086.

(5) Every two years, each physical therapist and physical therapist assistant must complete two hundred hours involving the application of physical therapy knowledge and skills which may be obtained in the clinical practice of physical therapy or in the nonclinical activities which include, but are not limited to, the following:

	<u>Clinical Activities</u>	<u>Hours Allowed</u>	<u>Documentation</u>
a.	Physical therapy clinical practice.	No limit	Documentation of physical therapy employment, the licensee must provide copies of employment records or other proof acceptable to the board of employment for the hours being reported.

	<u>Nonclinical Activities</u>	<u>Hours Allowed (within the two hundred hours required)</u>	<u>Documentation</u>
b.	Physical therapy teaching of: <ul style="list-style-type: none"> • Patient/client management, prevention and wellness. • Physical therapy ethics and standards of practice. • Professional advocacy/involvement. 	No limit	The licensee must provide documentation of such activities as acceptable to the board.

	Nonclinical Activities	Hours Allowed (within the two hundred hours required)	Documentation
c.	<u>Active service on boards or participation in professional or government organizations specifically related to the practice of physical therapy.</u>	No limit	The licensee must provide documentation of such activities as acceptable to the board.
d.	<u>Developing course work in physical therapy schools or education programs or physical therapy continuing education courses.</u>	No limit	The licensee must provide documentation of such activities as acceptable to the board.
e.	<u>Physical therapy research as a principal or associate researcher.</u>	No limit	The licensee must provide documentation of such activities as acceptable to the board.
f.	<u>Physical therapy consulting.</u>	No limit	The licensee must provide documentation of such activities as acceptable to the board.
g.	<u>Management of physical therapy services.</u>	No limit	The licensee must provide documentation of such activities as acceptable to the board.

AMENDATORY SECTION (Amending WSR 15-14-093, filed 6/29/15, effective 7/1/15)

WAC 246-915-086 Suicide assessment training standards. (1) A qualifying training in suicide assessment must:

- (a) Be an empirically supported training in suicide assessment that includes screening and referral;
- (b) Be provided by a single provider and must be at least three hours in length which may be provided in one or more sessions;
- (c) Beginning July 1, 2017, be taken from a provider listed on the department's suicide prevention training model list.

(2) The hours spent completing a training program in suicide assessment under this section count toward meeting any applicable continued competency requirements.

AMENDATORY SECTION (Amending WSR 05-06-020, filed 2/22/05, effective 3/25/05)

WAC 246-915-100 Approved physical ~~((therapy))~~ therapist schools. The board adopts the standards of the ~~((American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education))~~ CAPTE for the approval of physical therapy schools. Individuals who have a baccalaureate degree in physical therapy or who have a baccalaureate degree and a certificate or advanced degree from an institution of higher learning accredited by the ~~((American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education))~~ CAPTE or a

United States military physical therapy technician program that is substantially equivalent to an accredited United States physical therapist program accredited by the CAPTE will be considered qualified for licensure under RCW 18.74.-030((2)).

AMENDATORY SECTION (Amending WSR 05-06-021, filed 2/22/05, effective 3/25/05)

WAC 246-915-105 Approved physical therapist assistant schools. A board approved physical therapist assistant program shall mean a United States physical therapist assistant education program accredited by the ~~((American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education))~~ CAPTE or a United States military physical therapy technician program that is substantially equivalent to an accredited United States physical therapist assistant program accredited by the CAPTE will be considered qualified for licensure under RCW 18.74.030.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-120 ~~((Physical therapist applicants from unapproved schools:))~~ Foreign educated applicants.

~~((1))~~ Applicants who have not graduated from a physical therapy program approved by the board must:

- (a) Have a bachelor's degree in physical therapy with all credits earned at an institution of higher learning that confers at least a bachelor's degree in physical therapy which is approved by the country's Ministry of Education/Health, or governmental entity;
- (b) Have a valid, unencumbered license or authorization to practice physical therapy in the country in which the physical therapy education was obtained;
- (c) Have graduated from a program of physical therapy education with requirements substantially equal to those required of graduates of board approved programs;
- (d) Submit an application for review by the board;
- (e) Submit official transcripts from the physical therapy program showing degree date; and
- (f) Submit transcripts, fees, and other documentation to a credentialing service approved by the board and request the evaluation report be sent directly to the board.

~~((2))~~ In addition to the other requirements of this rule, the applicant must demonstrate a working knowledge of English by obtaining:

- (a) Scores of at least:
 - (i) 4.5 on the test of written English (TWE);
 - (ii) 50 on the test of spoken English (TSE); and
 - (iii) 220 on the computer based test of English as a foreign language (TOEFL) or 560 on the paper based TOEFL;
 or
- (b) Scores on the test of English as a foreign language (TOEFL) internet-based test (IBT) of at least:
 - (i) 24 on the writing section;
 - (ii) 26 on the speaking section;
 - (iii) 21 on the reading section;
 - (iv) 18 on the listening comprehension section; and
 - (v) 89 on the overall examination.

(3) The board may request additional supporting documentation as necessary.

(4) The degree's total credits must be at least one hundred twenty-three. A semester credit is equal to fifteen hours of classroom instruction per semester. For courses with a laboratory component, a semester credit is also equal to thirty hours of laboratory instruction per semester. (A semester credit equals 0.67 quarter credits.)

The applicant may meet the objective of one hundred twenty-three semester credits requirement by using additional elective credits in either general or professional education beyond the minimal requirements.

(5) Substantially equal physical therapy education as used in subsection (1)(c) of this section, shall include a total of one hundred twenty-three semester credits or equivalent credits of college education including:

General education—at least fifty-four semester credits:

(a) Humanities—nine semester credits which may include English, speech, foreign language, literature, music/art, philosophy and other humanities courses;

(b) Social sciences—ten semester credits which may include history, social sciences, philosophy, civilization, psychology, sociology, economics and other social science courses;

(c) Biological, natural, and physical science—eight semester credits which may include chemistry, mathematics, physics, biology, zoology, anatomy, kinesiology, physiology and other biological and natural science courses. In addition, the applicant must have one semester (five semester credits) of chemistry with laboratory and one semester (four semester credits) of physics with laboratory.

(6) Professional education. An applicant who has graduated from an unapproved school must complete at least sixty-nine semester credits in the following topics:

(a) Basic health sciences. At least one semester (at least four semester credits) in each of the following topics:

- (i) Human anatomy (specific to physical therapy);
- (ii) Human physiology (specific to physical therapy);
- (iii) Neurological science;
- (iv) Kinesiology or functional anatomy;
- (v) Abnormal or developmental psychology; and
- (vi) Pathology.

(b) Clinical sciences. The essential element of physical therapy education is teaching the student to assess and treat appropriately across the spectrum of age. Therefore, any educational course work should contain all of the following:

(i) Clinical medicine pertinent to physical therapy. Including, but not be limited to:

- (A) Neurology;
- (B) Orthopedics;
- (C) Pediatrics;
- (D) Geriatrics.

(ii) Physical therapy course work including, but not limited to:

- (A) Physical agents;
- (B) Musculoskeletal assessment and treatment;
- (C) Neuromuscular assessment and treatment;
- (D) Cardiopulmonary assessment and treatment;
- (E) Wound debridement/wound care;
- (F) Pharmacology.

(e) Clinical education. Clinical education must include demonstrated application of physical therapy theories, techniques, and procedures, as supervised by a physical therapist. The applicant must have at least two clinical affiliations of no less than eight hundred hours total.

(d) Related professional course work. The applicant must complete three semester courses in the following topics:

- (i) Professional ethics;
- (ii) Administration;
- (iii) Community health;
- (iv) Research;
- (v) Educational techniques; and
- (vi) Medical terminology.

(7) Applicants must have received a grade of "C" or higher in all professional education course work.

(8) The applicant may apply for the College-Level Education Program (CLEP) and their scores may be applied toward college credit. The board will consider the conversion of CLEP scores to college credits provided by a board-approved credentialing agency.

(9) The board may allow applicants who have not graduated from a physical therapy program approved by the board to correct deficiencies by completing board-approved course work. To obtain course work preapproval, the applicant must submit a written request along with the course description/syllabus for the proposed course.)) (1) An applicant whose first professional degree in physical therapy was awarded from a foreign physical therapy program that is not or was not accredited by the CAPTE must submit:

(a) An application for review by the board;

(b) A credentials evaluation report of professional education and training prepared by a board-approved credentials evaluation agency. The report must be sent directly from the credentialing agency to the board. It is the responsibility of the applicant to pay the expenses associated with the credentials evaluation:

(i) The report must provide evidence and documentation that the applicant completed education outside a state or territory of the United States that is substantially equivalent to the education of a physical therapist who graduated from a physical therapy education program accredited by CAPTE.

(ii) To be approved as a credentialing agency, the agency must use the appropriate course work tool (CWT) adopted by the Federation of State Boards of Physical Therapy to determine substantial equivalency. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist earned their first professional degree in physical therapy.

(c) Evidence of English language proficiency:

(i) Verification that English is the native language of the country of origin, and the physical therapy program employs English as the language of training; or

(ii) Verification that the applicant has achieved a score of not less than 560 on the paper Test of English as a Foreign Language (TOEFL) or a score of not less than 220 on the computer Test of English as a Foreign language (TOEFL), a score of not less than 50 on the Test of Spoken English (TSE) and a score of not less than 4.5 on the Test of Written English (TWE); or

(iii) Verification that the applicant has achieved the following minimum scores for each category of the internet-based TOEFL (ibTOEFL) examination: Writing, 24; speaking, 26; reading, 21; listening, 18; with an overall score of not less than 89. These passing scores must all be earned during the same test sitting.

(d) Verification of a valid, unencumbered license or authorization to practice physical therapy in the country in which the physical therapy education was obtained;

(e) Official transcripts from the physical therapy program showing degree date;

(f) Passing scores for the Washington jurisprudence examination;

(g) Passing scores for the National Physical Therapy Examination (NPTE); and

(h) Any additional supporting documentation as requested by the board;

(2) The applicant must have received a grade of "C" or higher (or equivalent) in all professional education course work;

(3) The applicant may apply for the college-level education program (CLEP) and their scores may be applied toward college credit. The board will consider the conversion of CLEP scores to college credits provided by a board-approved credentialing agency;

(4) The board may allow applicants to correct general education deficiencies by completing board-approved course work. To obtain professional course work preapproval, the applicant must submit a written request along with the course description/syllabus for the proposed course.

(5) An applicant whose first professional degree in physical therapy was awarded from a foreign physical therapy program that is or was accredited by the CAPTE must follow the requirements under WAC 246-915-030 and 246-915-100.

AMENDATORY SECTION (Amending WSR 91-05-094, filed 2/20/91, effective 3/23/91)

WAC 246-915-130 Initial evaluation—Referral(~~—Nonreferral~~)—Recommendations—Follow-up. (1) Initial evaluation of a patient (~~(shall)~~ **must** include history, patient's chief complaint, examination, and recommendation for treatment.

~~((2))~~ **(a)** Direct referral of a patient by an authorized health care practitioner may be by telephone, letter, email, fax, or in person(~~(-Provided, however,))~~);

(b) If the instructions are oral, the physical therapist may administer treatment accordingly, but must make a notation (~~(for his/her))~~ **in the patient** record describing the nature of the treatment, the date administered, the name of the (~~(person))~~ **patient** receiving treatment, and the name of the referring authorized health care practitioner.

~~((3))~~ **(2)** The physical therapist will follow-up each patient visit with the appropriate recordkeeping as defined in WAC 246-915-200.

(3) For patient reevaluations the licensed physical therapist must at a minimum to visually see the patient.

AMENDATORY SECTION (Amending WSR 04-13-052, filed 6/11/04, effective 7/12/04)

WAC 246-915-140 Personnel identification. (1) Each person shall wear identification showing his or her clinical title, (~~(and/or))~~ **and their** role in the facility as a physical therapist, a physical therapist assistant, a physical therapy aide, or a graduate physical therapist as appropriate. Trained supportive personnel may not use any term or designation which indicates or implies that he or she is licensed as a physical therapist or physical therapist assistant in the state of Washington.

(2) The licensee must post the license or interim permit, or a (~~(certified))~~ copy of the license or interim permit, or a printout from the department's provider credential search web site, in a safe, conspicuous location at the licensee's work site. The licensee may block out his or her address before posting the license or interim permit.

If the licensee does not have a principal place of business or conducts business in any other location, he or she must have a copy of his or her license available for inspection while performing services within his or her authorized scope of practice.

NEW SECTION

WAC 246-915-181 Supervision responsibilities. A physical therapist is professionally and legally responsible for patient care given by assistive personnel under his or her supervision. If a physical therapist fails to adequately supervise patient care given by assistive personnel, the board may take disciplinary action against the physical therapist.

(1) Regardless of the setting in which physical therapy services are provided, only the licensed physical therapist may perform the following responsibilities:

(a) Interpretation of referrals;

(b) Initial examination, problem identification, and diagnosis for physical therapy;

(c) Development or modification of a plan of care that is based on the initial examination and includes the goals for physical therapy intervention;

(d) Determination of which tasks require the expertise and decision-making capacity of the physical therapist and must be personally rendered by the physical therapist, and which tasks may be delegated;

(e) Assurance of the qualifications of all assistive personnel to perform assigned tasks through written documentation of their education or training that is maintained and available at all times;

(f) Delegation and instruction of the services to be rendered by the physical therapist, physical therapist assistant, or physical therapy aide including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures;

(g) Timely review of documentation, reexamination of the patient, and revision of the plan of care when indicated;

(h) Establishment of a discharge plan.

(2) Supervision requires that the patient reevaluation is performed:

(a) Every fifth visit, or if treatment is performed more than five times per week, reevaluation must be performed at least once a week;

(b) When there is any change in the patient's condition not consistent with planned progress or treatment goals.

(3) Patient reexamination means the licensed physical therapist must physically observe and interview the patient and reexamine the patient as necessary during an episode of care to evaluate progress or change in patient status and modify the plan of care accordingly or discontinue physical therapy services.

(4) For patient reevaluations the licensed physical therapist must at a minimum to visually see the patient.

(5) Supervision of assistive personnel means:

(a) Physical therapist assistants may function under direct or indirect supervision;

(b) Physical therapy aides must function under direct supervision;

(c) The physical therapist may supervise a total of two assistive personnel at any one time.

In addition to the two assistive personnel authorized in (c) of this subsection, the physical therapist may supervise a total of two persons who are pursuing a course of study leading to a degree as a physical therapist or a physical therapist assistant.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-182 Unprofessional conduct—Sexual misconduct. ~~((1) The physical therapist and physical therapist assistant shall never engage in sexual contact or sexual activity with current clients.~~

~~(2) Sexual contact or sexual activity is prohibited with a former client for two years after cessation or termination of professional services.~~

~~(3) The physical therapist and physical therapist assistant shall never engage in sexual contact or sexual activity with former clients if such contact or activity involves the abuse of the physical therapist-client relationship. Factors which the board may consider in evaluating if the physical therapist or physical therapist assistant-client relationship has been abusive includes, but is not limited to:~~

~~(a) The amount of time that has passed since therapy terminated;~~

~~(b) The nature and duration of the therapy;~~

~~(c) The circumstances of cessation or termination;~~

~~(d) The former client's personal history;~~

~~(e) The former client's current mental status;~~

~~(f) The likelihood of adverse impact on the former client and others; and~~

~~(g) Any statements or actions made by the physical therapist or physical therapist assistant during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the former client.~~

~~(4) The physical therapist and physical therapist assistant shall never engage in sexually harassing or demeaning behavior with current or former clients.~~

~~(5) These rules do not prohibit:~~

~~(a) The provision of physical therapy services on an urgent, unforeseen basis where circumstances will not allow a physical therapist or physical therapist assistant to obtain reassignment or make an appropriate referral;~~

~~(b) The provision of physical therapy services to a spouse, or family member, or any other person who is in a preexisting, established relationship with the physical therapist or physical therapist assistant where no evidence of abuse of the physical therapist or physical therapist assistant-client relationship exists.)~~ (1) A physical therapist or a physical therapist assistant must not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, as defined in WAC 246-16-020, inside or outside the health care setting. Sexual misconduct must constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the health care practitioner's scope of practice;

(c) Rubbing against a patient or client or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Examination of or touching genitals without using gloves;

(g) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(h) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

(i) Dressing or undressing in the presence of the patient, client or key party;

(j) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(k) Encouraging masturbation or other sex act in the presence of the health care provider;

(l) Masturbation or other sex act by the health care provider in the presence of the patient, client or key party;

(m) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(n) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(o) Soliciting a date with a patient, client or key party;

(p) Discussing the sexual history, preferences or fantasies of the health care provider;

(q) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(r) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(s) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as

demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(t) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and

(u) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent, or a conviction of a sex offense as defined in RCW 9.94A.030.

(3) A physical therapist or physical therapist assistant must not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the physical therapist or physical therapist assistants sexual needs.

(4) A physical therapist or physical therapist assistant must not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a former patient, client or key party within two years after the provider-patient/client relationship ends.

(5) After the two-year period of time described in subsection (4) of this section, a physical therapist or physical therapist assistant must not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the physical therapist or physical therapist assistant; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

(6) When evaluating whether a physical therapist or physical therapist assistant is prohibited from engaging, or attempting to engage, in sexual misconduct, the board will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient;

(e) Communication between the physical therapist or physical therapist assistant and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's personal or private information was shared with the physical therapist or physical therapist assistant;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

(7) Patient, client or key party initiation or consent does not excuse or negate the physical therapist or physical therapist assistant's responsibility.

(8) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient or client.

AMENDATORY SECTION (Amending WSR 11-05-026, filed 2/7/11, effective 3/10/11)

WAC 246-915-187 Use of telehealth in the practice of physical therapy. (1) Licensed physical therapists and physical therapist assistants may provide physical therapy via telehealth following all requirements for standard of care, including those defined in chapter((s)) 18.74 RCW and ((246-915-WAC)) this chapter.

(2) The physical therapist or physical therapist assistant must identify in the clinical record that the physical therapy occurred via telehealth.

(3) ~~((The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:))~~ For the purposes of this section:

(a) "Telehealth" means providing physical therapy via electronic communication where the physical therapist or physical therapist assistant and the patient are not at the same physical location.

(b) "Electronic communication" means the use of interactive, secure multimedia equipment that includes, at a minimum, audio and video equipment permitting two-way, real time interactive communication between the physical therapist or the physical therapist assistant and the patient.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-190 Division of fees—Rebating—Financial interest—Endorsement. ~~((1) Physical therapists and physical therapist assistants are not to directly or indirectly request, receive or participate in the dividing, transferring, assigning, rebating or refunding of an unearned fee, or to profit by means of a credit or other valuable consideration such as an unearned commission, discount, or gratuity in connection with the furnishing of physical therapy services.~~

(2) Physical therapists and physical therapist assistants who practice physical therapy as partners or in other business entities may pool fees and moneys received, either by the partnership or other entity, for the professional services furnished by any physical therapist or physical therapist assistant member or employee of the partnership or entity. Physical therapists and physical therapist assistants may divide or apportion the fees and moneys received by them, in the part-

nership or other business entity, in accordance with the partnership or other agreement.

(3) There shall be no rebate to any health care practitioner who refers or authorizes physical therapy treatment or evaluation as prohibited by chapter 19.68 RCW.

(4) Physical therapists and physical therapist assistants are not to influence patients to rent or purchase any items which are not necessary for the patient's care.)) A physical therapist or physical therapist assistant must comply with chapter 19.68 RCW.

AMENDATORY SECTION (Amending WSR 92-08-039, filed 3/24/92, effective 4/24/92)

WAC 246-915-200 Physical therapy records. In order to maintain the integrity of physical therapy practice, the physical therapist is responsible for obtaining all necessary information, such as medical history, contraindications, or(;) any special instructions from an authorized health care practitioner. The evaluation and treatment plan ((shall)) must be written according to acceptable physical therapy practice consistent with the delegated health care task. Records must be maintained and include date of treatment, treatment record, and signature of person responsible for the treatment.

AMENDATORY SECTION (Amending WSR 04-08-100, filed 4/6/04, effective 5/7/04)

WAC 246-915-210 Mandatory reporting—General provisions. ((1) The following definitions apply to the requirements for mandatory reporting set out in WAC 246-915-220 through 246-915-280:

(a) "Unprofessional conduct" as used in these regulations shall mean the conduct described in RCW 18.130.180.

(b) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.

(c) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.

(d) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(e) "Board" means the physical therapy board, whose address is:

Department of Health
P.O. Box 47868
Olympia, WA 98504-7868

(f) "Physical therapist" means a person licensed pursuant to chapter 18.74 RCW.

(g) "Mentally or physically disabled physical therapist" means a physical therapist who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice physical therapy with reasonable skill and safety to patients by reason of any mental or physical condition.

(2) All reports required by WAC 246-915-220 through 246-915-280 shall be submitted to the board as soon as possi-

ble. A report shall contain the following information if known:

(a) The name, address and telephone number of the person making the report.

(b) The name and address and telephone numbers of the physical therapist being reported.

(c) The case number of any patient whose treatment is a subject of the report.

(d) A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences.

(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.

(f) Any further information which would aid the evaluation of the report.)) The board adopts the model rules for mandatory reporting as contained in chapter 246-16 WAC.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-300 Philosophy governing voluntary substance abuse monitoring programs. The board recognizes the need to establish a means of proactively providing early recognition and treatment options for physical therapists and physical therapist assistants whose competency may be impaired due to the abuse of drugs or alcohol. The board intends that such physical therapists and physical therapist assistants be treated and their treatment monitored so that they can return to or continue to practice their profession in a way which safeguards the public. To accomplish this the board shall approve voluntary substance abuse monitoring programs ((and shall)). The Washington recovery and monitoring program (WRAMP) is the board's approved substance abuse monitoring program under RCW 18.130.175. The board may refer physical therapists and physical therapist assistants impaired by substance abuse to ((approved programs)) WRAMP as an alternative to instituting, or in connection with, disciplinary proceedings as defined in RCW 18.130.160.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-310 Terms used in WAC 246-915-300 through 246-915-330. (1) (("Approved substance abuse monitoring program" or "approved monitoring program" is a program the board has determined meets the requirements of the law and the criteria established by the board in WAC 246-915-320 which enters into a contract with physical therapists or physical therapist assistants who have substance abuse problems regarding the required components of the physical therapist's or physical therapist assistant's recovery activity and oversees the physical therapist's or physical therapist assistant's compliance with these requirements. Substance abuse monitoring programs do not provide evaluation or treatment to participating physical therapists or physical therapist assistants.

(2)) "Monitoring contract" is a comprehensive, structured agreement between the recovering physical therapist or physical therapist assistant and ((the approved monitoring

program stipulating the physical therapist's or physical therapist assistant's consent to comply with the monitoring program and its required components of the physical therapist's or physical therapist assistant's recovery activity.

~~(3))~~ WRAMP defining the requirements of the physical therapist or physical therapist assistant program participation.

~~(2)~~ "Approved treatment facility" is a facility ~~((approved by the bureau of alcohol and substance abuse, department of social and health services according to RCW 70.96A.020(2) or 69.54.030 to provide intensive alcoholism or drug treatment if located within Washington state. Drug and alcohol treatment programs located out-of-state must be equivalent to the standards required for approval under RCW 70.96A.020(2) or 69.54.030.~~

~~(4))~~ certified by the division of behavioral health and recovery (DBHR) department of social and health services, according to chapters 388-877 through 388-877B WAC that meets the defined standards. Drug and alcohol treatment facilities located out-of-state must have substantially equivalent standards.

~~(3)~~ "Substance abuse" or "substance use disorder" means ~~((the impairment, as determined by the board, of a physical therapist's or physical therapist assistant's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.~~

~~(5))~~ a chronic progressive illness that involves the use of alcohol or other drugs to a degree that it interferes with the functional life of the licensee, as manifested by health, family, job (professional services), legal, financial, or emotional problems.

~~(4)~~ "Aftercare" ~~((is that))~~ means a period of time after intensive treatment that provides the physical therapist or physical therapist assistant and the physical therapist's or physical therapist assistant's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.

~~((6))~~ ~~(5)~~ "Support group" is a group of health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced health care professional facilitator in which physical therapists or physical therapist assistants may safely discuss drug diversion, licensure issues, return to work and other professional issues related to recovery.

~~((7) "Twelve steps))~~ ~~(6)~~ "Recovery-oriented group(s)" ~~((are))~~ means a group(s) such as alcoholics anonymous, narcotics anonymous, and related organizations based on a philosophy of anonymity, belief in a power outside of oneself, a peer group association, and self-help.

~~((8))~~ ~~(7)~~ "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids and other biologic specimens which are performed at irregular intervals not known in advance by the person being tested.

~~((9))~~ ~~(8)~~ "Health care professional" is an individual who is licensed, certified or registered in Washington to engage in the delivery of health care to patients.

~~(9)~~ "Washington recovery and monitoring program (WRAMP)" is the approved substance abuse monitoring program as described in RCW 18.130.175 that meets criteria

established by the board. WRAMP does not provide evaluation or treatment services.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-320 Approval of substance abuse monitoring programs. ~~((The board will approve the))~~ ~~(1)~~ WRAMP is the board approved monitoring program ~~((s))~~ which will participate in the board's substance abuse monitoring program. A monitoring program approved by the board may be contracted with an entity outside the department but within the state, out-of-state, or a separate structure within the department.

~~(1)~~ The approved monitoring program will not provide evaluation or treatment to the participating physical therapists or physical therapist assistants.

~~(2)~~ The approved monitoring program ~~((will))~~ WRAMP will employ staff ~~((must have))~~ with the qualifications and knowledge of both substance abuse and the practice of physical therapy as defined in this chapter to be able to evaluate:

- ~~(a)~~ Clinical laboratories;
- ~~(b)~~ Laboratory results;
- ~~(c)~~ Providers of substance abuse treatment, both individuals and facilities;
- ~~(d)~~ Support groups;
- ~~(e)~~ The physical therapy work environment; and
- ~~(f)~~ The ability of the physical therapist or physical therapist assistant to practice with reasonable skill and safety.

~~((3) The approved monitoring program will))~~ ~~(2)~~ WRAMP will enter into a monitoring contract with the physical therapist or physical therapist assistant and the board to oversee the physical therapist's or physical therapist assistant's ~~((compliance with the requirements of the program))~~ required recovery activities.

~~((4) The approved monitoring program may make))~~ ~~(3)~~ WRAMP may make exceptions to individual components of the contract may be made on an individual basis as needed.

~~((5) The approved monitoring program staff will))~~ ~~(4)~~ WRAMP will determine, on an individual basis, whether a physical therapist or physical therapist assistant will be prohibited from engaging in the practice of physical therapy for a period of time and restrictions, if any, on the physical therapist's or physical therapist assistant's access to controlled substances in the work place.

~~((6) The approved monitoring program shall))~~ ~~(5)~~ WRAMP will maintain records on participants.

~~((7) The approved monitoring program will))~~ ~~(6)~~ WRAMP will be responsible for providing feedback to the physical therapist or physical therapist assistant as to whether treatment progress is acceptable.

~~((8) The approved monitoring program shall))~~ ~~(7)~~ WRAMP will report to the board any physical therapist or physical therapist assistant who fails to comply with the requirement of the monitoring program.

~~((9) The approved monitoring program shall receive from))~~ ~~(8)~~ The board ~~((guidelines))~~ approves WRAMP's procedures on treatment, monitoring, and limitations on the practice of physical therapy for those participating in the program.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-330 Participation in approved substance abuse monitoring program. (1) ~~(In lieu of disciplinary action, the physical therapist or physical therapist assistant may accept board referral into the approved)~~ Any physical therapist or physical therapist assistant participating in the substance abuse monitoring program(;) must:

(a) ~~(The physical therapist or physical therapist assistant shall)~~ Undergo a complete ((physical and)) psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professional(s) with expertise in ((chemical dependency. The person(s) performing the evaluation shall not also be the provider of the recommended treatment)) substance use disorder. The person(s) performing the evaluation must not also be the provider of the recommended treatment.

(b) ~~(The physical therapist or physical therapist assistant shall)~~ Enter into a contract with ((the board and the approved substance abuse monitoring program to comply with the requirements of the program)) WRAMP which shall include, but not be limited to, the following terms, which require the physical therapist or physical therapist assistant to:

(i) ~~(The physical therapist or physical therapist assistant will)~~ Undergo ((intensive substance abuse)) the recommended level of treatment in an approved treatment facility, including aftercare.

(ii) ~~(The physical therapist or physical therapist assistant will agree to remain free of)~~ Abstain from all mind-altering substances including alcohol and cannabis except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101.

(iii) ~~(The physical therapist or physical therapist assistant must)~~ Complete ((the)) any prescribed aftercare program of the intensive treatment facility, which may include individual ((and/or)) or group psychotherapy.

(iv) ~~(The physical therapist or physical therapist assistant must)~~ Cause the treatment counselor(s) to provide reports to the approved monitoring program at specified intervals. Reports ((shall)) must include treatment, prognosis and goals.

(v) ~~(The physical therapist or physical therapist assistant will submit to)~~ Complete random or for cause drug screening as specified by ((the approved monitoring program)) WRAMP.

(vi) ~~(The physical therapist or physical therapist assistant will)~~ Attend support groups facilitated by a health care professional ((and/or)) or twelve step group meetings as specified by the monitoring contract.

(vii) ~~(The physical therapist or physical therapist assistant will)~~ Comply with specified employment conditions and restrictions as defined by the monitoring contract.

(viii) ~~(The physical therapist or physical therapist assistant shall sign a waiver allowing the approved monitoring program)~~ Agree in writing to allow WRAMP to release information to the board if the physical therapist or physical therapist assistant does not comply with the requirements of ((this)) the monitoring contract or is unable to practice with reasonable skill and safety.

~~((e) The physical therapist or physical therapist assistant is responsible for paying)~~ (ix) Pay the costs of the ~~((physical and psychosocial))~~ substance use disorder evaluation, substance abuse treatment, and random drug screens.

~~((d) The physical therapist or physical therapist assistant may be subject to disciplinary action under RCW 18.130.160 if the physical therapist or physical therapist assistant does not consent to be referred to the approved monitoring program, does not comply with specified employment restrictions, or does not successfully complete the program.~~

(2) ~~A physical therapist or physical therapist assistant who is not being investigated by the board or subject to current disciplinary action or currently being monitored by the board for substance abuse may voluntarily participate in the approved substance abuse monitoring program without being referred by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the board if they meet the requirements of the approved monitoring program:~~

(a) ~~The physical therapist or physical therapist assistant shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professional(s) with expertise in chemical dependency. The person(s) performing the evaluation shall not also be the provider of the recommended treatment.~~

(b) ~~The physical therapist or physical therapist assistant shall enter into a contract with the approved substance abuse monitoring program to comply with the requirements of the program which shall include, but not be limited to:~~

(i) ~~The physical therapist or physical therapist assistant will undergo intensive substance abuse treatment in an approved treatment facility.~~

(ii) ~~The physical therapist or physical therapist assistant will agree to remain free of all mind-altering substances including alcohol except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101.~~

(iii) ~~The physical therapist or physical therapist assistant must complete the prescribed aftercare program of the intensive treatment facility, which may include individual and/or group psychotherapy.~~

(iv) ~~The physical therapist or physical therapist assistant must cause the treatment counselor(s) to provide reports to the approved monitoring program at specified intervals. Reports shall include treatment, prognosis and goals.~~

(v) ~~The physical therapist or physical therapist assistant will submit to random drug screening as specified by the approved monitoring program.~~

(vi) ~~The physical therapist or physical therapist assistant will attend support groups facilitated by a health care professional and/or twelve step group meetings as specified by the contract.~~

(vii) ~~The physical therapist or physical therapist assistant will comply with employment conditions and restrictions as defined by the contract.~~

(viii) ~~The physical therapist or physical therapist assistant shall sign a waiver allowing the approved monitoring program to release information to the board if the physical~~

therapist or physical therapist assistant does not comply with the requirements of this contract.

(e) ~~The physical therapist or physical therapist assistant is responsible for paying the costs of the physical and psycho-social evaluation, substance abuse treatment, and random drug screens.~~

~~(3) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved monitoring programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplinary authority for cause as defined in subsections (1) and (2) of this section. Records held by the board under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.)~~ (x) Sign any requested release of information authorizations.

(2) When referred to WRAMP in lieu of discipline, the physical therapist or physical therapist assistant must enter into a referral contract with the board. The board may take disciplinary action against the license of the physical therapist or physical therapist assistant under RCW 18.130.160 based on the violation by the physical therapist or physical therapist assistant of the referral contract.

(3) A physical therapist or physical therapist assistant may voluntarily participate in WRAMP in accordance with RCW 18.130.175(2) without first being referred to WRAMP by the board.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-350 Inactive credential. (1) A physical therapist or physical therapist assistant may obtain an inactive credential(~~(-Refer to the requirements of)~~) as described in chapter 246-12 WAC, Part 4.

(2) Practitioners with an inactive credential for three years or less who wish to return to active status must meet the requirements of chapter 246-12 WAC, Part 4.

(3) Practitioners with an inactive credential for more than three years, who have been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Submit verification of active practice from any other United States jurisdiction; and

(b) Meet the requirements of chapter 246-12 WAC, Part 4.

(4) Practitioners with an inactive credential for more than three years, but less than five years, who have not been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Successfully pass the (~~(examination)~~) NPTE as provided in RCW 18.74.035. The board may waive reexamination if the practitioner presents evidence of continuing competency satisfactory to the board; and

(b) Must meet the requirements of chapter 246-12 WAC, Part ~~((2))~~ 4.

(5) Practitioners with an inactive credential for five years or longer, who have not been in active practice in another

United States jurisdiction, and wish to return to active status must:

(a) Meet the requirements of chapter 246-12 WAC, Part 4; and

(b) Successfully retake and pass the NPTE as provided in RCW 18.74.035.

AMENDATORY SECTION (Amending WSR 06-18-044, filed 8/30/06, effective 9/30/06)

WAC 246-915-360 Sharp debridement education and training. Licensed physical therapists may perform sharp debridement upon showing evidence of adequate education and training. Physical therapists may not delegate sharp debridement. The board will accept the following as adequate education and training:

(1) Twenty hours of mentored sharp debridement training (~~(-mentored training)~~) in a clinical setting that includes observation, cotreatment, ((and)) supervised treatment((-Twenty hours mentored training in a clinical setting must include)), and a case mix similar to the physical therapists' expected practice((-or)).

(2) Certification as a wound care specialist by the American Academy of Wound Management; the National Alliance of Wound Care; or other organizations approved by the board, meets the requirements of this section(~~(-or~~

~~(3) An affidavit submitted prior to July 1, 2006, by a physical therapist licensed in Washington demonstrating education and training in sharp debridement, including the use of a sealpel)).~~

AMENDATORY SECTION (Amending WSR 06-18-044, filed 8/30/06, effective 9/30/06)

WAC 246-915-370 Electroneuromyographic examinations education and training. A physical therapist may perform electroneuromyographic (EMG) examinations, which may include needle EMG and nerve conduction studies, to test neuromuscular function only if the physical therapist has received a referral from an authorized health care practitioner identified in RCW 18.74.010(7) and only upon demonstrating education and training in EMG examinations. The performance of tests of neuromuscular function includes the performance of electroneuromyographic examinations. The board will accept the following as evidence of education and training:

(1) A minimum of four hundred hours of instruction in electroneuromyographic examinations including at least two hundred needle EMG studies under direct supervision from a qualified provider. A qualified provider includes a physical therapist with board certification in clinical electrophysiology from the American Board of Physical Therapy Specialties, a neurologist, or a physiatrist; or

(2) A person who is board certified in clinical electrophysiology from the American Board of Physical Therapy Specialties meets the requirements of this section(~~(-or~~

~~(3) A written attestation submitted prior to July 1, 2007, by a physical therapist licensed in Washington demonstrating that the physical therapist has education and experience acceptable to the board to perform EMG examinations)).~~

AMENDATORY SECTION (Amending WSR 15-19-149, filed 9/22/15, effective 1/1/16)

WAC 246-915-990 Physical ((therapy)) therapist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application	
Application	\$65.00
Active license renewal	
License renewal	50.00
Late renewal penalty	50.00
Expired license reissuance	50.00
Inactive license renewal	
License renewal	35.00
Expired license reissuance	50.00
Duplicate license	15.00
Verification of license	25.00

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-915-070 Application due date.
- WAC 246-915-220 Mandatory reporting—Physical therapists.
- WAC 246-915-230 Health care institutions and home health agencies—Mandatory reporting.
- WAC 246-915-240 Physical therapy associations or societies—Mandatory reporting.
- WAC 246-915-250 Health care service contractors and disability insurance carriers—Mandatory reporting.
- WAC 246-915-260 Professional liability carriers—Mandatory reporting.
- WAC 246-915-270 Courts—Mandatory reporting.
- WAC 246-915-280 State and federal agencies—Mandatory reporting.

WSR 18-07-107
PROPOSED RULES
WASHINGTON STATE PATROL
 [Filed March 21, 2018, 9:47 a.m.]

Original Notice.
 Preproposal statement of inquiry was filed as WSR 17-21-010.
 Title of Rule and Other Identifying Information: Proposed new chapter 446-95 WAC, Statewide sexual assault kit

tracking system: WAC 446-95-010 Authority and purpose, 446-95-020 Definitions, 446-95-030 Washington sexual assault kits, 446-95-040 Survivor tracking of their Washington sexual assault kit, 446-95-050 Receipt and processing of sexual assault kit, and 446-95-060 Updates and tracking of sexual assault kits.

Hearing Location(s): On April 24, 2018, at 11:00 a.m. - 12:00 p.m., at the Washington State Patrol (WSP), Helen Somers [Sommers] Building, 106 11th Street S.E., Room 4060, Olympia, WA 98507.

Date of Intended Adoption: On or after May 1, 2018.

Submit Written Comments to: Kimberly Mathis, Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, by April 23, 2018.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, phone 360-596-4017, email wsprules@wsp.wa.gov, by April 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed new chapter 446-95 WAC seeks to prescribe and standardize the format of sexual assault kits used by medical facilities throughout the state.

Reasons Supporting Proposal: The legislature passed 2SHB 2530 during the 2016 legislative session that directed WSP to create and operate a statewide sexual assault kit tracking system.

Statutory Authority for Adoption: RCW 43.17.060.

Statute Being Implemented: Chapter 43.43 RCW.

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

Name of Proponent: WSP, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Burkdoll, Seattle, Washington, 206-262-6002; Implementation and Enforcement: WSP, Seattle, Washington, 206-262-6002.

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 is exempt pursuant to RCW 34.05.328 (5)(b)(v).

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.

March 20, 2018
 John R. Batiste
 Chief

Chapter 446-95 WAC
STATEWIDE SEXUAL ASSAULT KIT TRACKING SYSTEM

NEW SECTION

WAC 446-95-010 Authority and purpose. (1) RCW 43.43.545 requires the Washington state patrol to create and operate a statewide sexual assault kit tracking system. The authority the legislature gave to the Washington state patrol

to implement a tracking system requires adoption of rules establishing a uniform sexual assault kit to allow successful implementation of the sexual assault kit tracking initiative.

(2) The purposes of these rules are to:

(a) Implement the intent and purpose of RCW 43.43.545 and 43.43.546 to track the location and status of sexual assault kits throughout the criminal justice process, including the initial collection and possible storage at medical facilities, receipt and storage at law enforcement agencies, receipt and analysis at forensic laboratories, and possible destruction.

(b) Establish standards and procedures to track the location and status of sexual assault kits throughout the criminal justice process.

(3) These rules are necessary to:

(a) Ensure all sexual assault kits used within the state of Washington are standardized for tracking in the sexual assault kit tracking system;

(b) Allow medical facilities performing sexual assault forensic examinations, law enforcement agencies, prosecutors, the Washington state patrol forensic laboratory services bureau, and other entities having custody of sexual assault kits to update the status and location of sexual assault kits; and

(c) Allow survivors of sexual assault to anonymously track or receive updates regarding the status and location of their sexual assault kits.

(4) These rules apply to all entities participating in the sexual assault kit tracking system established by the Washington state patrol. Pursuant to RCW 35.21.195, 36.27.020, 36.28.200, 43.43.546, and 70.41.365, those entities include, but are not limited to:

(a) Hospitals licensed under chapter 70.41 RCW performing sexual assault forensic examinations in the state of Washington;

(b) Washington state patrol forensic laboratory services bureau;

(c) All commissioned city, county, and state law enforcement officers; and

(d) Prosecuting attorneys.

(5) The sexual assault kit tracking system is not intended to replace or alter existing chain of custody systems, processes, procedures, rules, regulations, or legal requirements of any participating entity.

(6) This rule is not intended to provide grounds to challenge the admissibility of DNA evidence in court proceedings. Nothing in this section is intended to create a private right of action or claim on the part of any individual, entity, or agency against commissioned city, county, and state law enforcement agencies.

NEW SECTION

WAC 446-95-020 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "Hospital" means any institution, place, building, or agency licensed under chapter 70.41 RCW;

(2) "Sexual assault kit" or "SAK" means a standardized box containing items for collecting and storing forensic evidence;

(3) "Washington sexual assault kit" or "WSAK" means a standardized SAK distributed by the approved vendor including a unique identifier, containing items for collecting and storing forensic evidence; with unique login information to be provided to the survivor allowing tracking of the WSAK;

(4) "Sexual assault kit tracking system" or "tracking system" means a secure system accessible via the internet intended for the purposes of tracking all Washington sexual assault kits, regardless of when they were collected;

(5) "Survivor" or "victim" means any person who suffers physical, emotional, financial, and/or psychological impact as a proximate result of a sexual assault;

(6) "Sexual assault" has the same meaning as in RCW 70.125.030;

(7) "Unique identifier" means a numeric or alphanumeric string that is associated with a single entity within a given system (i.e., barcode).

NEW SECTION

WAC 446-95-030 Washington sexual assault kits. (1)

The Washington state patrol shall ensure that the standards for the WSAK are consistent with the standards or guidelines established by a committee which may include representatives from medical specialists, sexual assault nurse examiners, attorneys, forensic scientists, and law enforcement personnel in Washington state. The Washington state department of enterprise services may establish a master contract for the supply of WSAKs that meet these standards or guidelines.

(2) WSAKs procured by hospitals or other entities shall be ordered from and payment provided to the approved contracted vendor.

(3) Each WSAK shall bear a Washington sexual assault kit tracking system unique identifier.

(4) Each WSAK shall contain the information needed for a survivor to track the location of their WSAK using the tracking system.

NEW SECTION

WAC 446-95-040 Survivor tracking of their Washington sexual assault kit. (1)

The tracking system shall allow survivors of sexual assault to anonymously track or receive updates regarding the status and location of their sexual assault kits.

(2) Survivors shall be given unique login information to access the status and location of their WSAK at the discretion of the appropriate hospital, medical facility, or law enforcement agency personnel.

(3) Destruction of a WSAK shall be documented in the system.

NEW SECTION

WAC 446-95-050 Receipt and processing of sexual assault kits. (1)

The approved vendor will distribute WSAKs with a unique identifier. The WSAK is entered by the vendor using the tracking system prior to shipment. Upon delivery, the WSAKs are entered using the tracking system as acknowledgment of receipt.

(2) The WSAK becomes trackable by the survivor when the unique identifier is entered to document that a forensic medical examination has taken place.

(3) The tracking system is not intended to replace existing processes and procedures established regarding the collection of evidence, or delay in any way the care of the survivor or law enforcement notification.

NEW SECTION

WAC 446-95-060 Updates and tracking of sexual assault kits. (1) The use of the tracking system or a WSAK should not alter the existing procedures, rules, regulations, or legal requirements for hospitals and law enforcement agencies.

(2) The tracking system is not intended to provide "real-time" location data. There are circumstances (such as shipping times) that might create delays in location status being reported. Kits are entered into the tracking system upon arrival at their intended destination. WSAKs are not recorded as they leave a destination.

(3) To ensure proper tracking of the WSAK, the affixed unique identifier must be readable. The WSAK should be packaged separately from other evidence, and without secondary packaging.

(4) Tracking begins when a WSAK or SAK is initially entered in the tracking system.

(a) Sexual assault kits not bearing a tracking system unique identifier, located at hospitals and law enforcement agencies, shall be provided a unique identifier. This shall be affixed to the SAK and entered for use by the tracking system.

(b) The tracking system will not provide historical data for existing SAKs prior to the initial entry.

(5) Subsequent transfers/changes in location will be documented by the tracking system.

WSR 18-07-108
PROPOSED RULES
GAMBLING COMMISSION

[Filed March 21, 2018, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-099.

Title of Rule and Other Identifying Information: New WAC 230-05-125 Report gross gambling receipts on the quarterly license report; and amending WAC 230-05-170 Fees for other businesses.

Hearing Location(s): On May 10, 2018, at 10:00 a.m., at the Washington State Gambling Commission, Nisqually Conference Room, 4565 7th Avenue S.E., Lacey, WA 98503. Hearing will take place at a special 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 "May Commission meeting" to confirm the hearing date, location, and start time.

Date of Intended Adoption: May 10, 2018.

Submit Written Comments to: Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, fax 360-486-3624, by May 1, 2018.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, by May 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The key rules in this fifth rule package sets the following: Licensees reporting of gross gambling receipts on their quarterly license reports and they must submit a quarterly license report for each quarter they hold a license even if they have paid their annual maximum license fee; and (2) adds a fee for linked bingo prize providers, which is meant to correct a technical oversight because these providers were inadvertently excluded from the fee schedule changes made in package #1 filed on February 9, 2018, in WSR 18-05-026.

Reasons Supporting Proposal: These two changes provide clarification and technical changes to the simplified fee schedule rules filed on February 9, 2018, in WSR 18-05-026. In general, changes to the commission's fee structure were made to reduce the approximately one ninety-four different fees for commercial and nonprofit organizations and individuals into a simplified structure that would be easier and more predictable for both the agency and its licensees.

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: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Tina Griffin, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Implementation: David Trujillo, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3512.

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 gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis 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) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; 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.

March 21, 2018

Brian J. Considine

Legal and Legislative Manager

NEW SECTION

WAC 230-05-125 Report gross gambling receipts on the quarterly license report. (1) You must report your gross gambling receipts for each of your licensed gambling activities during the previous quarter on your quarterly license report.

(2) You must submit a quarterly license report even if you:

- (a) Have paid the maximum annual license fee for your license year;
- (b) You do not owe a quarterly license fee for the quarter;
- (c) Have no gross gambling receipts to report;
- (d) Close your business;
- (e) Surrender your license;
- (f) Do not renew your license; or
- (g) Your license is revoked or suspended.

NEW SECTION

WAC 230-05-170 Fees for other businesses. All other business organizations must pay the following fees:

(1) Annual licenses or permits:

License Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Agricultural fair bingo (annual permit)	\$200	-	-
Call centers for enhanced raffles	\$4,800	-	-
Commercial amusement games	\$500 plus \$65 per approved location	1.130%	\$11,000
Distributor	\$700	1.430%	\$7,000
Fund-raising event distributor	\$280	1.430%	\$1,000
Linked bingo prize providers	\$1,500	.046%	\$20,000
Manufacturer	\$1,500	1.430%	\$25,000
Manufacturer's special sales permit	\$250	-	-
Punch board/pull-tab service business permit	\$250	-	-
Gambling service supplier	\$300	1.430%	\$7,000

(2) Events or permits:

License or Permit Type	Base License Fee	Gross Gambling Receipts Rate	Maximum Annual License Fee
Recreational gaming activity	\$65	-	-
Special property bingo	\$30	-	-

(3) Change fees:

Change of:	Fee
Name	\$100
Location	\$100
Business classification (same owners)	\$100
Corporate stock/limited liability company shares/units	\$100
License transfers	\$100

(4) Other fees:

Transaction	Fee
Add a new amusement game location	\$65
Defective punch board/pull-tab cost recovery fees	Up to \$100
Duplicate license	\$50
Pre- and post-licensing investigations	Cost reimbursement
Review, inspection, and/or evaluation of gambling equipment, supplies, services, games, schemes, or group 12 amusement games	Deposit and cost reimbursement

WSR 18-07-112
PROPOSED RULES
DEPARTMENT OF COMMERCE
 [Filed March 21, 2018, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-14-065.

Title of Rule and Other Identifying Information: Chapter 194-26 WAC, Determination of the average greenhouse gas emission output from new, commercially available combined cycle combustion turbines.

Hearing Location(s): On April 25, 2018, at 1 p.m., at the Washington State Department of Commerce (Commerce), Columbia Room, 1011 Plum Street S.E., Olympia, WA 98501.

Date of Intended Adoption: May 9, 2018.

Submit Written Comments to: Greg Nothstein, P.O. Box 42525, Olympia, WA 98504-2525, email greg.nothstein@commerce.wa.gov, by 5 p.m., April 25, 2018.

Assistance for Persons with Disabilities: Contact Carolee Sharp, phone 360-725-3118, TTY 360-586-0772, email carolee.sharp@commerce.wa.gov, by April 18, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update the average greenhouse gas emission output from new, commercially available combined cycle combustion turbines.

Reasons Supporting Proposal: Updating the average greenhouse gas emission output from new, commercially available combined cycle combustion turbines every five years is required by statute.

Statutory Authority for Adoption: RCW 80.80.050.

Statute Being Implemented: RCW 80.80.040, 80.80.050.

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

Name of Proponent: Commerce, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Greg Nothstein, 1011 Plum Street S.E., Olympia, WA 98501, 360-725-3112.

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. Commerce is not an agency listed in RCW 34.05.328 as one to which that statute applies.

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.

Explanation of exemptions: RCW 80.80.050 requires commerce to update the average greenhouse gas emission output from new, commercially available combined cycle combustion turbines every five years.

March 21, 2018
 Jaime Rossman
 Rules Coordinator

Chapter 194-26 WAC

AVERAGE AVAILABLE GREENHOUSE GAS EMISSIONS OUTPUT FOR EMISSIONS PERFORMANCE STANDARD

AMENDATORY SECTION (Amending WSR 13-06-074, filed 3/6/13, effective 4/6/13)

WAC 194-26-010 Authority. This chapter is promulgated pursuant to ~~((the authority granted in RCW 80.80.040, requiring the department of commerce to adopt the average available greenhouse gases emissions output as determined under RCW 80.80.050 as the greenhouse gas emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments))~~ RCW 80.80.050, which requires the energy division of the department of commerce to survey new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers and purchased in the United States to determine the average rate of emissions of greenhouse gases for these turbines and adopt the average available greenhouse gases emissions output by rule every five years beginning five years after July 22, 2007.

AMENDATORY SECTION (Amending WSR 13-06-074, filed 3/6/13, effective 4/6/13)

WAC 194-26-020 Average available greenhouse gas emissions output. The energy ~~((policy))~~ division of the department of commerce has surveyed new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers and purchased in the United States, and finds the average ~~((rate of emissions of))~~ available greenhouse gases ~~((for these turbines))~~ emissions output to be nine hundred ~~((and seventy))~~ thirty pounds per megawatt-hour as of the effective date of this section.

WSR 18-07-114
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed March 21, 2018, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-19-096 on September 19, 2017.

Title of Rule and Other Identifying Information: The department is amending several regulations in chapter 220-330 WAC that affect harvesting clams and oysters for personal use and include WAC 220-330-110 Clams other than razor clams, mussels—Areas and seasons and 220-330-140 Oysters—Areas and seasons.

Hearing Location(s): On Tuesday, May 8, 2018, at 5:30 to 7:30 p.m., at the Washington State Department of Fish and Wildlife (WDFW), Port Townsend District Office, 375 Hudson Street, Marina Room, Port Townsend, WA 98368.

Date of Intended Adoption: On or after May 9, 2018.

Submit Written Comments to: Scott Bird, WDFW Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155, by May 7, 2018.

Assistance for Persons with Disabilities: Contact Delores Noyes, phone 360-902-2349, TTY 360-902-2207, email Delores.Noyes@dfw.wa.gov, by May 4, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Recent clam and oyster survey data, sport harvest projections, and negotiations affecting intertidal treaty and nontreaty fisheries, along with public health considerations and administrative tasks, call for recreational clam and oyster seasons to be extended or shortened on some public beaches. This proposal reflects these changes.

Reasons Supporting Proposal: The amendments in the rule proposal will perpetuate shellfish resources while maximizing recreational fishing opportunity and protecting public health

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, and 77.04.020.

Statute Being Implemented: RCW 77.04.012, 77.12.047, and 77.04.020.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Eardley, 375 Hudson Street, Port Townsend, WA 98368, 360-302-3030 ext. 302; Implementation: Ron Warren, 1111 Washington Street S.E., Olympia, WA 98504 [98501], 360-902-2799; and Enforcement: Chief Steve Bear, 1111 Washington Street [S.E.], Olympia, WA 98501, 360-902-2373.

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 changes do not affect hydraulics.

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. These rule changes clarify dates for anticipated open periods and areas for harvesting clams and oysters for personal use. There are no anticipated professional services required to comply. Based on the department's analysis, the proposed rules do not require any additional equipment, supplies, labor, or administrative costs on the part of the public.

March 21, 2018

Scott Bird
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-18-004, filed 8/24/17, effective 9/24/17)

WAC 220-330-110 Clams other than razor clams, mussels—Areas and seasons. It is permissible to take, dig for, and possess clams and mussels for personal use from public tidelands year-round, except the following restrictions apply to the public tidelands at the beaches listed below:

(1) Ala Spit: All public tidelands of Ala Spit are open May 1 through May 31 only.

(2) Alki Park: Closed year-round.

(3) Alki Point: Closed year-round.

(4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.

(5) Bay View State Park: Closed year-round.

(6) Belfair State Park: Open year-round.

(7) Blaine Marine Park: Closed year-round.

(8) Blake Island State Park Marina: Closed year-round.

(9) Blowers Bluff North: Closed year-round.

(10) Brown's Point Lighthouse: Closed year-round.

(11) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn due west from the southern boundary of Burfoot Park to the opposite shore near 68th Avenue N.W. are closed year-round.

(12) Cama Beach State Park: Closed year-round.

(13) Camano Island State Park: Closed year-round.

(14) Chimacum Creek Tidelands (Irondale Beach Park): Public tidelands south of the main Chimacum Creek channel are closed year-round.

(15) Chuckanut Bay: All tidelands of Chuckanut Bay north of the BNSF Railroad trestle are closed year-round.

(16) Coupeville: Closed year-round.

(17) Cultus Bay: Closed year-round.

(18) Dave Mackie County Park: Closed year-round.

(19) Des Moines City Park: Closed year-round.

(20) Discovery Park: Closed year-round.

(21) DNR-142: Closed year-round.

(22) DNR-144 (Sleeper): Closed year-round.

(23) Dockton County Park: Closed year-round.

(24) Dosewallips State Park: Open year-round only in the area defined by boundary markers and signs posted on the beach.

(25) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers on the beach.

(26) Drayton West: All public tidelands of Drayton Harbor are closed year-round, except tidelands identified as approved by the department of health and defined by boundary markers and signs posted on the beach are open year-round.

(27) Duckabush: Open November 1 through April 30 only.

(28) Dungeness Spit and Dungeness National Wildlife Refuge Tidelands: Open May 15 through September 30 only.

~~((28))~~ (29) Eagle Creek: Open July 1 through July 31 only.

~~((29))~~ (30) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.

~~((30))~~ (31) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.

~~((31))~~ (32) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.

~~((32))~~ (33) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.

~~((33))~~ (34) Fay Bainbridge Park: Closed year-round.

~~((34))~~ (35) Fort Flagler State Park: Open January 1 through April 15 and July 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.

~~((35))~~ (36) Freeland County Park: Open January 1 through May 15 only.

~~((36))~~ (37) Frye Cove County Park: Open May 1 through May 31 only.

~~((37))~~ (38) Fudge Point State Park: Closed year-round.

~~((38))~~ (39) Gertrude Island: All tidelands of Gertrude Island are closed year-round.

~~((39))~~ (40) Golden Gardens: Closed year-round.

~~((40))~~ (41) Graveyard Spit: Closed year-round.

~~((41))~~ (42) Guss Island: All tidelands of Guss Island are closed year-round.

~~((42))~~ (43) Hoodspout: Tidelands at Hoodspout Salmon Hatchery are closed year-round.

~~((43))~~ (44) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.

~~((44))~~ (45) Howarth Park/Darlington Beach: Closed year-round.

~~((45))~~ (46) Illahee State Park: Open April 1 through July 31 only.

~~((46))~~ (47) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open August 15 through September 30 only.

~~((47))~~ (48) Joemma Beach State Park: Closed year-round.

(49) Kayak Point County Park: Closed year-round.

~~((48))~~ (50) Kitsap Memorial State Park: Closed year-round.

~~((49))~~ (51) Kopachuck State Park: Open ~~((June))~~ April 1 through ~~((July))~~ May 31 only.

~~((50))~~ (52) Lent Landing (Port Washington Narrows): Closed year-round.

~~((51))~~ (53) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.

~~((52))~~ (54) Lincoln Park: Closed year-round.

~~((53))~~ (55) Lions Park (Bremerton): Closed year-round.

~~((54))~~ (56) Lofall: Closed year-round.

~~((55))~~ (57) Long Island Oyster Reserve (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.

~~((56))~~ (58) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.

~~((57))~~ (59) Long Point West: Closed year-round.

~~((58))~~ (60) Lower Roto Vista Park: Closed year-round.

~~((59))~~ (61) Manchester State Park: Closed year-round.

~~((60))~~ (62) March Point Recreation Area: Closed year-round.

~~((61))~~ (63) McNeil Island: All tidelands of McNeil Island are closed year-round.

~~((62))~~ (64) Meadowdale County Park: Closed year-round.

~~((63))~~ (65) Mee-Kwa-Mooks Park: Closed year-round.

~~((64))~~ (66) Monroe Landing: Closed year-round.

~~((65))~~ (67) Mukilteo: Closed year-round.

~~((66))~~ (68) Mystery Bay State Park: Open October 1 through April 30 only.

~~((67))~~ (69) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are closed year-round.

~~((68))~~ (70) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.

~~((69))~~ (71) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.

~~((70))~~ (72) North Bay (Case Inlet): State-owned oyster reserves and contiguous state-owned tidelands south and east of the powerline crossing are open September 1 through December 31 only.

~~((71))~~ (73) North Beach County Park: Closed year-round.

~~((72))~~ (74) North Tabook Point: Closed year-round.

~~((73))~~ (75) Oak Bay County Park: Open May 1 through May 31 only.

~~((74))~~ (76) Oak Harbor: Closed year-round.

~~((75))~~ (77) Oak Harbor Beach Park: Closed year-round.

~~((76))~~ (78) Oak Harbor City Park: Closed year-round.

~~((77))~~ (79) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

~~((78))~~ (80) Old Mill County Park (Silverdale): Closed year-round.

~~((79))~~ (81) Olympia Shoal: Closed year-round.

~~((80))~~ (82) Pat Carey Vista Park: Closed year-round.

~~((81))~~ (83) Penrose Point State Park: Open March 1 through April 30 only, except that portion of Mayo Cove within the commercially prohibited growing area is closed year-round.

~~((82))~~ (84) Picnic Point County Park: Closed year-round.

~~((83))~~ (85) Pitship Point: Closed year-round.

~~((84))~~ (86) Pitt Island: All tidelands on Pitt Island are closed year-round.

~~((85))~~ (87) Pleasant Harbor State Park: Closed year-round.

~~((86))~~ (88) Pleasant Harbor WDFW Boat Launch: Closed year-round.

~~((87))~~ (89) Point Defiance: Closed year-round.

~~((88))~~ (90) Point No Point South: Closed year-round.

~~((89))~~ (91) Point Whitney Lagoon: Open January 1 through April 30 only.

~~((90))~~ (92) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open January 1 through ~~((March 31))~~ April 30 only.

~~((91))~~ (93) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.

~~((92))~~ (94) Port Gamble Heritage Park Tidelands: Open year-round.

~~((93))~~ (95) Port Gardner: Closed year-round.

~~((94))~~ (96) Port Townsend Ship Canal/Portage Beach: Open January 1 through ~~(June 15)~~ May 31 only.

~~((95))~~ (97) Post Point: Closed year-round.

~~((96))~~ (98) Potlatch DNR tidelands: Open April 1 through August 31 only.

~~((97))~~ (99) Potlatch State Park: Open April 1 through August 31 only.

~~((98))~~ (100) Priest Point County Park: Closed year-round.

~~((99))~~ (101) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.

~~((100))~~ (102) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed to the harvest of clams year-round, except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.

~~((101))~~ (103) Retsil: Closed year-round.

~~((102))~~ (104) Richmond Beach Saltwater Park: Closed year-round.

~~((103))~~ (105) Salt Creek Recreation Area (DNR-419): Closed year-round.

~~((104))~~ (106) Saltair Beach (Kingston Ferry Terminal): Closed year-round.

~~((105))~~ (107) Saltwater State Park: Closed year-round.

~~((106))~~ (108) Samish Bay: Public tidelands of Samish Bay between Scotts Point and an unnamed point on the shore (latitude N48.5745°; longitude W122.4440°) are closed year-round.

~~((107))~~ (109) Scenic Beach State Park: Closed year-round.

~~((108))~~ (110) Seahurst County Park: Closed year-round.

~~((109))~~ (111) Semiahmoo County Park: Closed year-round.

~~((110))~~ (112) Semiahmoo Marina: Closed year-round.

~~((111))~~ (113) Sequim Bay State Park: Open January 1 through June 30 only.

~~((112))~~ (114) Shine Tidelands State Park: Open January 1 through May 15 only.

~~((113))~~ (115) Silverdale Waterfront Park: Closed year-round.

~~((114))~~ (116) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.

~~((115))~~ (117) Skagit Bay Estuary Wildlife Areas: All public tidelands of Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.

~~((116))~~ (118) South Carkeek Park: Closed year-round.

~~((117))~~ (119) South Mukilteo: Closed year-round.

~~((118))~~ (120) Southworth: Closed year-round.

~~((119))~~ (121) Spencer Spit State Park: Open March 1 through July 31 only.

~~((120))~~ (122) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.

~~((121))~~ (123) Taylor Bay: Closed year-round.

~~((122))~~ (124) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.

~~((123))~~ (125) Triton Cove Tidelands: Open July 15 through August 31 only.

~~((124))~~ (126) Twanoh State Park: Open ~~(July 15)~~ September 1 through September 30 only.

~~((125))~~ (127) Walker County Park: Closed year-round.

~~((126))~~ (128) West Dewatto: DNR Beach 44A open July 1 through September 30 only.

~~((127))~~ (129) West Pass Access: Closed year-round.

~~((128))~~ (130) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road ~~(open June 1 through December 31 only)~~ is closed year-round.

~~((129))~~ (131) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.

~~((130))~~ (132) Wolfe Property State Park: Open January 1 through May 15 only.

~~((131))~~ (133) Woodard Bay Natural Resource Conservation Area: Closed year-round.

~~(It is permissible to take, dig for, and possess clams, cockles, borers, and mussels, not including razor clams, for personal use in Grays Harbor and Willapa Harbor year-round, except from state oyster reserves, which are closed to clam digging year-round.)~~

It is permissible to take, dig for, and possess clams, cockles, borers, and mussels, not including razor clams, for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

Violation of the provisions of this section shall be an infraction, punishable under RCW 77.15.160.

AMENDATORY SECTION (Amending WSR 17-18-004, filed 8/24/17, effective 9/24/17)

WAC 220-330-140 Oysters—Areas and seasons. It is permissible to take and possess oysters for personal use from public tidelands year-round except the following restrictions apply to the public tidelands at the beaches listed below:

(1) Ala Spit: All public tidelands of Ala Spit open May 1 through May 31 only.

(2) Alki Park: Closed year-round.

(3) Alki Point: Closed year-round.

(4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.

(5) Bay View State Park: Closed year-round.

- (6) Blaine Marine Park: Closed year-round.
- (7) Blake Island State Park Marina: Closed year-round.
- (8) Blowers Bluff North: Closed year-round.
- (9) Brown's Point Lighthouse: Closed year-round.
- (10) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary of Burfoot Park to the opposite shore near 68th Avenue N.W. are closed year-round.
- (11) Cama Beach State Park: Closed year-round.
- (12) Camano Island State Park: Closed year-round.
- (13) Chimacum Creek Tidelands (Irondale Beach Park): Public tidelands south of the main Chimacum Creek channel are closed year-round.
- (14) Chuckanut Bay: All tidelands of Chuckanut Bay north of the BNSF Railroad trestle are closed year-round.
- (15) Coupeville: Closed year-round.
- (16) Cultus Bay: Closed year-round.
- (17) Dave Mackie County Park: Closed year-round.
- (18) Des Moines City Park: Closed year-round.
- (19) Discovery Park: Closed year-round.
- (20) DNR-142: Closed year-round.
- (21) DNR-144 (Sleeper): Closed year-round.
- (22) Dockton County Park: Closed year-round.
- (23) Dosewallips State Park: Open year-round only in the area defined by boundary markers and signs posted on the beach.
- (24) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers on the beach.
- (25) Drayton West: All public tidelands of Drayton Harbor are closed year-round, except tidelands identified as approved by the department of health and defined by boundary markers and signs posted on the beach are open year-round.
- (26) Duckabush: Open November 1 through April 30 only.
- (27) Dungeness Spit/National Wildlife Refuge: Open May 15 through September 30 only.
- ~~((27))~~ (28) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.
- ~~((28))~~ (29) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.
- ~~((29))~~ (30) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.
- ~~((30))~~ (31) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.
- ~~((31))~~ (32) Fay Bainbridge Park: Closed year-round.
- ~~((32))~~ (33) Fort Flagler State Park: Open January 1 through April 15 and July 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.
- ~~((33))~~ (34) Freeland County Park: Open January 1 through May 15 only.
- ~~((34))~~ (35) Frye Cove County Park: Open May 1 through May 31 only.
- ~~((35))~~ (36) Fudge Point State Park: Closed year-round.
- ~~((36))~~ (37) Gertrude Island: All tidelands of Gertrude Island are closed year-round.
- ~~((37))~~ (38) Golden Gardens: Closed year-round.
- ~~((38))~~ (39) Graveyard Spit: Closed year-round.
- ~~((39))~~ (40) Guss Island: All tidelands of Guss Island are closed year-round.
- ~~((40))~~ (41) Hoodspout: Tidelands at the Hoodspout Salmon Hatchery are closed year-round.
- ~~((41))~~ (42) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.
- ~~((42))~~ (43) Howarth Park/Darlington Beach: Closed year-round.
- ~~((43))~~ (44) Illahee State Park: Open April 1 through July 31 only.
- ~~((44))~~ (45) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open August 15 through September 30 only.
- ~~((45))~~ (46) Joemma Beach State Park: Closed year-round.
- (47) Kayak Point County Park: Closed year-round.
- ~~((46))~~ (48) Kitsap Memorial State Park: Closed year-round.
- ~~((47))~~ (49) Kopachuck State Park: Open ~~((March))~~ April 1 through ~~((July))~~ May 31 only.
- ~~((48))~~ (50) Lent Landing (Port Washington Narrows): Closed year-round.
- ~~((49))~~ (51) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.
- ~~((50))~~ (52) Lincoln Park: Closed year-round.
- ~~((51))~~ (53) Lions Park (Bremerton): Closed year-round.
- ~~((52))~~ (54) Lofall: Closed year-round.
- ~~((53))~~ (55) Long Island Oyster Reserve (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.
- ~~((54))~~ (56) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.
- ~~((55))~~ (57) Long Point West: Closed year-round.
- ~~((56))~~ (58) Lower Roto Vista Park: Closed year-round.
- ~~((57))~~ (59) Manchester State Park: Closed year-round.
- ~~((58))~~ (60) March Point Recreation Area: Closed year-round.
- ~~((59))~~ (61) McNeil Island: All tidelands of McNeil Island are closed year-round.
- ~~((60))~~ (62) Meadowdale County Park: Closed year-round.
- ~~((61))~~ (63) Mee-Kwa-Mooks Park: Closed year-round.
- ~~((62))~~ (64) Monroe Landing: Closed year-round.
- ~~((63))~~ (65) Mukilteo: Closed year-round.
- ~~((64))~~ (66) Mystery Bay State Park: Open October 1 through April 30 only.

~~((65))~~ (67) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are open year-round.

~~((66))~~ (68) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.

~~((67))~~ (69) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.

~~((68))~~ (70) North Bay (Case Inlet): State-owned oyster reserves and contiguous state-owned tidelands south and east of the powerline crossing are open September 1 through December 31 only.

~~((69))~~ (71) North Beach County Park: Closed year-round.

~~((70))~~ (72) North Tabook Point: Closed year-round.

~~((71))~~ (73) Oak Bay County Park: Open May 1 through May 31 only.

~~((72))~~ (74) Oak Harbor: Closed year-round.

~~((73))~~ (75) Oak Harbor Beach Park: Closed year-round.

~~((74))~~ (76) Oak Harbor City Park: Closed year-round.

~~((75))~~ (77) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

~~((76))~~ (78) Old Mill County Park (Silverdale): Closed year-round.

~~((77))~~ (79) Olympia Shoal: Closed year-round.

~~((78))~~ (80) Pat Carey Vista Park: Closed year-round.

~~((79))~~ (81) Penrose Point State Park: Open March 1 through April 30 only, except that part of Mayo Cove within the commercially prohibited growing area is closed year-round.

~~((80))~~ (82) Pitship Point: Closed year-round.

~~((81))~~ (83) Picnic Point County Park: Closed year-round.

~~((82))~~ (84) Pitt Island: Closed year-round.

~~((83))~~ (85) Pleasant Harbor State Park: Closed year-round.

~~((84))~~ (86) Pleasant Harbor WDFW Boat Launch: Closed year-round.

~~((85))~~ (87) Point Defiance: Closed year-round.

~~((86))~~ (88) Point No Point South: Closed year-round.

~~((87))~~ (89) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open January 1 through June 30 only.

~~((88))~~ (90) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.

~~((89))~~ (91) Port Gamble Heritage Park Tidelands: Open year-round.

~~((90))~~ (92) Port Gardner: Closed year-round.

~~((91))~~ (93) Port Townsend Ship Canal/Portage Beach: Open January 1 through ~~(June 15)~~ May 31 only.

~~((92))~~ (94) Post Point: Closed year-round.

~~((93))~~ (95) Potlatch DNR Tidelands: Open April 1 through August 31 only.

~~((94))~~ (96) Potlatch State Park: Open April 1 through August 31 only.

~~((95))~~ (97) Priest Point County Park: Closed year-round.

~~((96))~~ (98) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.

~~((97))~~ (99) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed year-round except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.

~~((98))~~ (100) Retsil: Closed year-round.

~~((99))~~ (101) Richmond Beach Saltwater Park: Closed year-round.

~~((100))~~ (102) Salt Creek Recreation Area (DNR-419): Closed year-round.

~~((101))~~ (103) Saltair Beach (Kingston Ferry Terminal): Closed year-round.

~~((102))~~ (104) Saltwater State Park: Closed year-round.

~~((103))~~ (105) Samish Bay: Public tidelands of Samish Bay between Scotts Point and an unnamed point on the shore (latitude N48.5745°; longitude W122.4440°) are closed year-round.

~~((104))~~ (106) Scenic Beach State Park: Closed year-round.

~~((105))~~ (107) Seahurst County Park: Closed year-round.

~~((106))~~ (108) Semiahmoo County Park: Closed year-round.

~~((107))~~ (109) Semiahmoo Marina: Closed year-round.

~~((108))~~ (110) Sequim Bay State Park: Open January 1 through June 30 only.

~~((109))~~ (111) Shine Tidelands State Park: Open January 1 through May 15 only.

~~((110))~~ (112) Silverdale Waterfront Park: Closed year-round.

~~((111))~~ (113) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.

~~((112))~~ (114) Skagit Bay Estuary Wildlife Areas: All public tidelands of the Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.

~~((113))~~ (115) South Carkeek Park: Closed year-round.

~~((114))~~ (116) South Mukilteo: Closed year-round.

~~((115))~~ (117) Southworth: Closed year-round.

~~((116))~~ (118) Spencer Spit State Park: Open March 1 through July 31 only.

~~((117))~~ (119) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.

~~((118))~~ (120) Taylor Bay: Closed year-round.

~~((119))~~ (121) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.

~~((120))~~ (122) Walker County Park: Closed year-round.

~~((121))~~ (123) West Pass Access: Closed year-round.

~~((122))~~ (124) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to

the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road (~~open June 1 through December 31 only~~) is closed year-round.

~~((123))~~ (125) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.

~~((124))~~ (126) Wolfe Property State Park: Open January 1 through May 15 only.

~~((125))~~ (127) Woodard Bay Natural Resource Conservation Area: Closed year-round.

It is permissible to take and possess oysters for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

Violation of the provisions of this section shall be an infraction, punishable under RCW 77.15.160.