

WSR 18-12-034
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Children's Administration)

[Filed May 29, 2018, 11:54 a.m., effective June 29, 2018]

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

Purpose: The department is repealing chapter 388-60 WAC and creating chapter 388-60A WAC to update rules in order to raise the standards of domestic violence perpetrator treatment, thereby increasing the effectiveness of treatment throughout Washington state. A crosswalk table of existing and new WAC sections is available upon request.

Citation of Rules Affected by this Order: New WAC 388-60A-0015, 388-60A-0025, 388-60A-0035, 388-60A-0045, 388-60A-0055, 388-60A-0100, 388-60A-0105, 388-60A-0110, 388-60A-0115, 388-60A-0120, 388-60A-0125, 388-60A-0130, 388-60A-0135, 388-60A-0140, 388-60A-0200, 388-60A-0210, 388-60A-0220, 388-60A-0230, 388-60A-0240, 388-60A-0250, 388-60A-0260, 388-60A-0270, 388-60A-0280, 388-60A-0300, 388-60A-0305, 388-60A-0310, 388-60A-0315, 388-60A-0320, 388-60A-0325, 388-60A-0330, 388-60A-0335, 388-60A-0340, 388-60A-0345, 388-60A-0350, 388-60A-0355, 388-60A-0360, 388-60A-0365, 388-60A-0370, 388-60A-0400, 388-60A-0405, 388-60A-0410, 388-60A-0415, 388-60A-0420, 388-60A-0425, 388-60A-0430, 388-60A-0435, 388-60A-0500, 388-60A-0510, 388-60A-0520 and 388-60A-0530; and repealing WAC 388-60-0015, 388-60-0025, 388-60-0035, 388-60-0045, 388-60-0055, 388-60-0065, 388-60-0075, 388-60-0085, 388-60-0095, 388-60-0105, 388-60-0115, 388-60-0125, 388-60-0135, 388-60-0145, 388-60-0155, 388-60-0165, 388-60-0175, 388-60-0185, 388-60-0195, 388-60-0205, 388-60-0215, 388-60-0225, 388-60-0235, 388-60-0245, 388-60-0255, 388-60-0265, 388-60-0275, 388-60-0285, 388-60-0295, 388-60-0305, 388-60-0315, 388-60-0325, 388-60-0335, 388-60-0345, 388-60-0355, 388-60-0365, 388-60-0375, 388-60-0385, 388-60-0395, 388-60-0405, 388-60-0415, 388-60-0425, 388-60-0435, 388-60-0445, 388-60-0455, 388-60-0465, 388-60-0475, 388-60-0485, 388-60-0495, 388-60-0505, 388-60-0515, 388-60-0525, 388-60-0535, 388-60-0545, 388-60-0555, 388-60-0565, 388-60-0575, 388-60-0585, 388-60-0595, 388-60-0605, 388-60-0615, 388-60-0625, 388-60-0635, 388-60-0645, 388-60-0655, 388-60-0665, 388-60-0675, 388-60-0685, 388-60-0695, 388-60-0705, 388-60-0715, 388-60-0725, 388-60-0735, 388-60-0745, and 388-60-0755.

Statutory Authority for Adoption: RCW 26.50.150.

Adopted under notice filed as WSR 18-05-060 on February 15, 2018.

A final cost-benefit analysis is available by contacting Amie Roberts, P.O. Box 45710, Olympia, WA 98504, phone 360-902-7962, email amie.roberts@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 50, Amended 0, Repealed 75.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 50, Amended 0, Repealed 75.

Date Adopted: May 25, 2018.

Cheryl Strange
Secretary

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 responsibility 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 accountability 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 certified 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 CADV Program@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 Misdemeanant 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 edu-

cation 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 Wash-

ington 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 domes-

tic 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, psy-

chology, 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 hap-

pen 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 violence 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 certified 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 treat-

ment 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 responsibility 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 responsibility 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 responsibility, 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-offenses or noncompliance 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.

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;

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

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

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

(v) 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.

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 it's 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 18-12-035**PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Division of Vocational Rehabilitation)

[Filed May 29, 2018, 12:22 p.m., effective June 30, 2018]

Effective Date of Rule: June 30, 2018.

Purpose: The department is repealing rules contained in chapter 388-891 WAC, Vocational rehabilitation services for individuals with disabilities and creating new rules in a new

chapter 388-891A WAC, Vocational rehabilitation services for individuals with disabilities. This new chapter supports the purpose of the division of vocational rehabilitation (DVR), which is to empower people with disabilities to achieve a better quality of life by obtaining and maintaining employment. The rules are intended to inform the public about DVR's vocational rehabilitation (VR) services and the conditions under which DVR provides them.

DVR is creating new rules in a new chapter 338-891A WAC in order to comply with new requirements resulting from the reauthorization of the federal Rehabilitation Act, add guidance to the DVR customer services manual (division procedures) and align the chapter of WAC with standard operating practice and federal rules, and increase the ease of locating WAC sections. For example, many sections of this chapter addressing the conditions under which DVR will pay for VR services have been relocated from sections grouped under the topic of "vocational rehabilitation services" to sections grouped under the topic of "paying for services."

A crosswalk table of existing and new WAC sections is available upon request.

Citation of Rules Affected by this Order: New WAC 388-891A-0005, 388-891A-0010, 388-891A-0100, 388-891A-0102, 388-891A-0103, 388-891A-0104, 388-891A-0110, 388-891A-0120, 388-891A-0130, 388-891A-0135, 388-891A-0140, 388-891A-0150, 388-891A-0200, 388-891A-0205, 388-891A-0206, 388-891A-0210, 388-891A-0211, 388-891A-0215, 388-891A-0220, 388-891A-0225, 388-891A-0230, 388-891A-0235, 388-891A-0240, 388-891A-0245, 388-891A-0250, 388-891A-0255, 388-891A-0260, 388-891A-0265, 388-891A-0270, 388-891A-0275, 388-891A-0295, 388-891A-0300, 388-891A-0310, 388-891A-0320, 388-891A-0330, 388-891A-0340, 388-891A-0400, 388-891A-0405, 388-891A-0410, 388-891A-0420, 388-891A-0421, 388-891A-0425, 388-891A-0430, 388-891A-0431, 388-891A-0440, 388-891A-0450, 388-891A-0490, 388-891A-0500, 388-891A-0505, 388-891A-0506, 388-891A-0507, 388-891A-0510, 388-891A-0515, 388-891A-0525, 388-891A-0526, 388-891A-0527, 388-891A-0530, 388-891A-0535, 388-891A-0540, 388-891A-0545, 388-891A-0550, 388-891A-0555, 388-891A-0600, 388-891A-0610, 388-891A-0611, 388-891A-0615, 388-891A-0620, 388-891A-0630, 388-891A-0640, 388-891A-0650, 388-891A-0660, 388-891A-0700, 388-891A-0705, 388-891A-0706, 388-891A-0707, 388-891A-0708, 388-891A-0709, 388-891A-0710, 388-891A-0715, 388-891A-0720, 388-891A-0725, 388-891A-0730, 388-891A-0731, 388-891A-0732, 388-891A-0735, 388-891A-0740, 388-891A-0745, 388-891A-0750, 388-891A-0755, 388-891A-0760, 388-891A-0765, 388-891A-0766, 388-891A-0767, 388-891A-0768, 388-891A-0769, 388-891A-0770, 388-891A-0785, 388-891A-0790, 388-891A-0791, 388-891A-0800, 388-891A-0805, 388-891A-0810, 388-891A-0815, 388-891A-0820, 388-891A-0825, 388-891A-0830, 388-891A-0836, 388-891A-0837, 388-891A-0838, 388-891A-0840, 388-891A-0855, 388-891A-0860, 388-891A-0865, 388-891A-0866, 388-891A-0880, 388-891A-0890, 388-891A-0900, 388-891A-0905, 388-891A-0910, 388-891A-0911, 388-891A-0912, 388-891A-0913, 388-891A-0915, 388-891A-0916, 388-891A-0920, 388-891A-0925, 388-891A-

0930, 388-891A-0940, 388-891A-0945, 388-891A-0950, 388-891A-0951, 388-891A-0960, 388-891A-0965, 388-891A-0966, 388-891A-0970, 388-891A-1000, 388-891A-1010, 388-891A-1015, 388-891A-1030, 388-891A-1040, 388-891A-1045, 388-891A-1050, 388-891A-1060, 388-891A-1065, 388-891A-1075, 388-891A-1080, 388-891A-1090, 388-891A-1100, 388-891A-1101, 388-891A-1102, 388-891A-1103, 388-891A-1105, 388-891A-1110, 388-891A-1120, 388-891A-1125, 388-891A-1130, 388-891A-1135, 388-891A-1136, 388-891A-1137, 388-891A-1140, 388-891A-1145, 388-891A-1150, 388-891A-1155, 388-891A-1156, 388-891A-1160, 388-891A-1161, 388-891A-1162, 388-891A-1163, 388-891A-1164, 388-891A-1165, 388-891A-1170, 388-891A-1171, 388-891A-1172, 388-891A-1173, 388-891A-1174, 388-891A-1175, 388-891A-1176, 388-891A-1177, 388-891A-1179, 388-891A-1180, 388-891A-1181, 388-891A-1182, 388-891A-1185, 388-891A-1186, 388-891A-1190, 388-891A-1194, 388-891A-1195, 388-891A-1196, 388-891A-1200, 388-891A-1205, 388-891A-1210, 388-891A-1230, 388-891A-1240, 388-891A-1300, 388-891A-1310, 388-891A-1311, 388-891A-1312, 388-891A-1320 and 388-891A-1330; and repealing WAC 388-891-0005, 388-891-0010, 388-891-0100, 388-891-0103, 388-891-0110, 388-891-0120, 388-891-0130, 388-891-0135, 388-891-0140, 388-891-0150, 388-891-0200, 388-891-0205, 388-891-0210, 388-891-0215, 388-891-0220, 388-891-0225, 388-891-0230, 388-891-0235, 388-891-0240, 388-891-0245, 388-891-0250, 388-891-0255, 388-891-0260, 388-891-0265, 388-891-0270, 388-891-0275, 388-891-0295, 388-891-0300, 388-891-0310, 388-891-0320, 388-891-0325, 388-891-0330, 388-891-0340, 388-891-0345, 388-891-0350, 388-891-0355, 388-891-0360, 388-891-0365, 388-891-0370, 388-891-0400, 388-891-0410, 388-891-0420, 388-891-0430, 388-891-0440, 388-891-0500, 388-891-0510, 388-891-0520, 388-891-0530, 388-891-0540, 388-891-0600, 388-891-0605, 388-891-0610, 388-891-0615, 388-891-0620, 388-891-0625, 388-891-0630, 388-891-0635, 388-891-0640, 388-891-0645, 388-891-0650, 388-891-0655, 388-891-0660, 388-891-0665, 388-891-0670, 388-891-0675, 388-891-0680, 388-891-0685, 388-891-0690, 388-891-0695, 388-891-0700, 388-891-0705, 388-891-0710, 388-891-0715, 388-891-0720, 388-891-0725, 388-891-0730, 388-891-0735, 388-891-0740, 388-891-0745, 388-891-0750, 388-891-0755, 388-891-0760, 388-891-0765, 388-891-0770, 388-891-0775, 388-891-0780, 388-891-0790, 388-891-0800, 388-891-0810, 388-891-0815, 388-891-0820, 388-891-0825, 388-891-0830, 388-891-0835, 388-891-0840, 388-891-0845, 388-891-0850, 388-891-0855, 388-891-0860, 388-891-0865, 388-891-0875, 388-891-0880, 388-891-0885, 388-891-0890, 388-891-0900, 388-891-0910, 388-891-0920, 388-891-0930, 388-891-0940, 388-891-0950, 388-891-0960, 388-891-0970, 388-891-0980, 388-891-1000, 388-891-1005, 388-891-1010, 388-891-1015, 388-891-1020, 388-891-1025, 388-891-1030, 388-891-1035, 388-891-1040, 388-891-1045, 388-891-1050, 388-891-1100, 388-891-1105, 388-891-1110, 388-891-1115, 388-891-1120, 388-891-1125, 388-891-1130, 388-891-1135, 388-891-1137, 388-891-1140, 388-891-1145, 388-891-1150, 388-891-1200, 388-891-1210, 388-891-1220, 388-891-1230, 388-891-1240, 388-891-1300, 388-891-1310, 388-891-1320, and 388-891-1330.

Statutory Authority for Adoption: RCW 74.29.020(8).

Other Authority: 34 C.F.R. (Code of Federal Regulations), Parts 361, 363, 397.

Adopted under notice filed as WSR 18-06-050 on March 2, 2018.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-891A-0206(3), added "WAC 388-891A-1060, under which DVR must not provide" changes made for clarification.

WAC 388-891A-0525(3), added "specific" to align more fully with federal regulations.

WAC 388-891A-0760(4), changed "any" to "an," and added ", and as described in WAC 388-891A-0615" for clarification.

WAC 388-891A-0766 (3)(a), deleted "paid and unpaid" to eliminate ambiguity with regulations of other agencies.

WAC 388-891A-0911 (1)(b), changed "when" to "and," and added "the IPE with an outcome in" changes add clarity and avoid conflict with federal regulations.

WAC 388-891A-1110(4), added "The," and added "described in WAC 388-891A-0725 through 388-891A-0732" clarifies what is considered job related.

A final cost-benefit analysis is available by contacting Michele Mulhern, DVR Senior Manager for Planning, Performance, and Policy, P.O. Box 45340, Olympia, WA 98504-5340, phone 360-725-3621, email mulhemi@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 23, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 176, Amended 0, Repealed 145.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 199, Amended 0, Repealed 145.

Date Adopted: May 25, 2018.

Cheryl Strange
Secretary

Chapter 388-891A WAC

VOCATIONAL REHABILITATION SERVICES FOR INDIVIDUALS WITH DISABILITIES

PURPOSE

NEW SECTION

WAC 388-891A-0005 What is the purpose of this chapter? This chapter explains the types of vocational rehabilitation (VR) services available to individuals who are eligible through the department of social and health services (DSHS), division of vocational rehabilitation (DVR).

VR services are offered to assist individuals with disabilities to prepare for, secure, maintain, advance in, or regain employment that is consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

This chapter is consistent with the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014 and codified in 34 C.F.R. Sec. 361, 363, and 397, as well as chapter 74.29 RCW, Rehabilitation Services for Individuals with Disabilities, other relevant state laws, and DSHS requirements.

DEFINITIONS

NEW SECTION

WAC 388-891A-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

(1) **"Comparable services and benefits"** means services and benefits, including accommodations and auxiliary aids and services, that are:

(a) Provided for, in whole or in part, by other federal, state, or local public agencies, health insurance, or employee benefits;

(b) Available to you when you need them to ensure your progress toward achieving the desired employment outcome in your individualized plan for employment (IPE); and

(c) Substantially similar to the services that you would otherwise receive from DVR.

(2) **"Competitive integrated employment"** means:

(a) Part-time or full-time work:

(i) that is performed in an integrated setting;

(ii) for which you are paid at or above the highest applicable minimum wage of those specified in 29 U.S.C. Sec. 206 (a)(1), RCW 49.46.020, or local minimum wage laws; and

(iii) Work for which you earn the same wages and benefits as other employees without disabilities in similar occupations or performing similar tasks, who have similar training, experience, and skills; or

(b) Self-employment that yields income comparable to that received by other individuals without disabilities who are self-employed in a similar occupation or performing similar tasks, who have similar training, experience, and skills.

(3) **"Division of vocational rehabilitation (DVR)"** means the division primarily concerned with the vocational rehabilitation of individuals with disabilities and responsible for the administration of the vocational rehabilitation program of the department of social and health services (DSHS).

(4) **"Employment outcome"** means competitive integrated employment, supported employment, self-employment, telecommuting, business ownership, or any other type of employment compensated at a competitive wage in an integrated setting that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(5) **"Extended employment"** means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with section 14(c) of the Fair Labor Standards Act.

(6) **"Extreme medical risk"** means the probability of substantially increasing your functional impairment or death if medical services, including mental health services, are not provided quickly.

(7) **"Family member"** means a person who:

(a) Is your relative or legal guardian; or

(b) Lives in the same household as you and has a substantial interest in your well-being.

(8) **"Individual with a disability"** means an individual:

(a) Who has a physical or mental impairment;

(b) Whose impairment results in a substantial impediment to employment; and

(c) Who can benefit in terms of an employment outcome as a result of receiving VR services.

(9) **"Individual with a most significant disability"** means an individual with a significant disability who has a severe physical or mental impairment resulting in serious functional limitations in four or more areas (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

(10) **"Individual with a significant disability"** means an individual with a disability:

(a) Who has a severe physical or mental impairment resulting in serious functional limitations in one or more areas (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(c) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, intellectual disability, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(11) **"Individualized Plan for Employment (IPE)"** means the written plan, approved by your DVR counselor, described in WAC 388-891A-0915 through 388-891A-0951.

(12) **"Integrated setting"** means one of the following:

(a) The setting in which you receive a VR service is integrated if it is a setting commonly found in the community (such as a store, office, or school) where you come into contact with people without disabilities while you are receiving the service. The people without disabilities who you come into contact with are not the same people providing VR services to you.

(b) The setting in which you work is integrated if it is a setting commonly found in the community where both your immediate co-workers and the public with which you interact include people without disabilities. The amount of contact you have with people without disabilities is the same that a

person without disabilities in the same type of job would experience.

(13) "**Most recent tax year**" means the most recent calendar year for which you:

- (a) Filed or were required to file an income tax return with the United States Internal Revenue Service (IRS); or
- (b) Were claimed as a dependent on an income tax return with the United States IRS.

(14) "**Physical or mental impairment**" means:

- (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or
- (b) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(15) "**Representative**" means any person chosen by an applicant or eligible individual, including a parent, family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(16) "**Student with a disability**" means an individual with a disability who is:

- (a) Currently enrolled in a secondary, postsecondary, or other recognized educational program;
- (b) Not younger than fourteen years of age and not older than the maximum age established for the receipt of services under part B of the Individuals with Disabilities Education Act (IDEA) in the state of Washington, as described in WAC 392-172A-02000; and
- (c) Receiving special education or related services under part B of IDEA or is a student with a disability for the purposes of section 504 of the Rehabilitation Act of 1973, as amended.

(17) "**Substantial impediment to employment**" means the limitations or barriers you experience as a result of a physical or mental impairment that hinder your ability to prepare for, secure, maintain, advance in, or regain employment that matches your abilities and capabilities.

(18) "**Vocational rehabilitation (VR) services**" means those services described in WAC 388-891A-0700 through 388-891A-0890.

(19) "**Youth with a disability**" means an individual with a disability who is not younger than fourteen years of age and not older than twenty-four years of age.

PROTECTION AND USE OF CONFIDENTIAL INFORMATION

NEW SECTION

WAC 388-891A-0100 What personal information about me does DVR keep on file? DVR keeps information regarding your eligibility and the services that you have received as required by federal and state laws and regulations. The kind of information that DVR keeps on file depends on your case status as follows:

(1) For an applicant or individual who has been determined eligible for services, the record of services that you have received from DVR is called the case service record. The case service record includes a narrative as well as information including, but not limited to:

- (a) The DVR application form or written request for VR services;
- (b) Documentation explaining the need for the trial work experience(s), if conducted, and the written plan for conducting the trial work experience(s), and documentation of progress reviews;
- (c) Documentation and records that support the determination of eligibility or ineligibility;
- (d) Documentation supporting the severity of disability and priority of service category determination;
- (e) Financial statement and supporting documentation as required;
- (f) Plan for employment, amendments to the plan, if amended, and information supporting the decisions documented on the plan;
- (g) Documentation describing how you used informed choice to make decisions throughout the process, including assessment services, selection of an employment outcome, VR services, service provider, type of setting, and how to get VR services;
- (h) If VR services are provided in a setting that is not integrated, documentation of the reason(s) for using a nonintegrated setting;
- (i) If you achieve a competitive integrated employment outcome, documentation to show:
 - (i) Your wages and benefits, including wages and benefits earned up to one year after closure;
 - (ii) That the job you have is:
 - (A) Described in your plan for employment;
 - (B) Consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and
 - (C) Paid at a competitive rate in an integrated setting;
 - (iii) That the services provided to you in your plan for employment helped you achieve the employment outcome identified on your individual plan for employment;
 - (iv) That you have been employed for at least ninety days and that you no longer need vocational rehabilitation services;
 - (v) That you and your DVR counselor agree that your employment is satisfactory and that you are performing well; and
 - (vi) That you have been informed, through appropriate modes of communication about the availability of post-employment services;
- (j) If DVR refers you to another state or federal program for services to prepare for, secure, maintain, advance in, or regain employment, documentation of the referral, the reason(s) for the referral, and the name of the program(s) to which you are referred;
- (k) Documentation of case closure, including:
 - (i) Reasons for closing the case service record;
 - (ii) How you were involved in the decision to close the case; and

(iii) A copy of the closure letter that explains the reason(s) for case closure and your rights if you disagree with the decision;

(l) Documentation of the results of mediation or fair hearings, if held;

(m) Documentation of semi-annual and annual reviews after your case service record is closed as outlined in WAC 388-891A-1330 if:

(i) You choose extended employment in a nonintegrated setting;

(ii) You achieve a supported employment outcome in an integrated setting for which you are paid in accordance with section 14(c) of the Fair Labor Standards Act; or

(iii) DVR determines you are ineligible because you are too severely disabled to benefit from VR services; and

(n) Other documentation that relates to your participation in VR services, including your progress throughout the VR process.

(2) For students with disabilities who are potentially eligible for services, the record:

(a) Includes personal and demographic information about you;

(b) Documents any consent from a parent or guardian required for you to participate in pre-employment transition services;

(c) Documents participation in pre-employment transition services before you apply for VR services; and

(d) May be transferred into your case service record upon application.

(3) For individuals who are either seeking employment in or employed in a job that pays below the federal minimum wage, the record documents the receipt of career counseling and information and referral services.

NEW SECTION

WAC 388-891A-0102 How long will DVR retain my personal information? DVR keeps a case service record while you are receiving services and for at least six years after closing your case service record. After six years, DVR may destroy the closed case service record.

NEW SECTION

WAC 388-891A-0103 May DVR obtain personal information about me? (1) DVR may obtain information about you to help us better understand your disabilities, barriers to employment, abilities, interests, and needs for VR services and to coordinate DVR services with the services you receive from other agencies and programs. With your written consent, DVR may obtain this personal information about you from service providers, cooperating agencies, and others. Examples of information DVR commonly obtains with your written consent include your:

(a) Identity and work status;

(b) Physical and mental health conditions;

(c) Disabilities and functional limitations;

(d) Substance use history and treatment recommendations;

(e) Educational history;

(f) Work history; and

(g) Background check results, including those that are not publicly accessible.

(2) DVR may obtain publicly accessible information about you without your written consent.

(3) DVR may obtain financial and personal information about you from state and federal agencies to verify program participation (including participation in education when appropriate), benefits you receive from other agencies or programs, and earnings and income from employment or self-employment. DVR will only collect such information if the state or federal agencies have legal authority to release it to DVR. This may occur with or without your consent.

(4) If DVR collects information about you from service providers or other agencies, the information will not be released to others without your written consent except under the circumstances identified in WAC 388-891A-0130 (2) and (3).

NEW SECTION

WAC 388-891A-0104 What happens if my personal information is lost, stolen, or released in error? DVR safeguards the information it collects and stores.

(1) DVR notifies you if it becomes aware that your protected information has been lost, stolen, or released in error.

(2) When your information has been released in error, DVR will make maximum efforts to recover your information.

NEW SECTION

WAC 388-891A-0110 What happens if DVR receives information that indicates I have a history of violent or predatory acts? If DVR receives information that indicates you have a history of violent or predatory behavior, DVR staff will discuss that history with you. DVR will ask that you consent to release information about this behavioral history to a potential service provider or potential employer prior to referral for services when a risk assessment, as described in WAC 388-891A-0707, indicates a potential risk to individuals you may encounter while receiving services or working.

NEW SECTION

WAC 388-891A-0120 May I ask DVR to change incorrect information in my case service record? You may ask DVR to correct information in your case service record that you believe is incorrect.

(1) If DVR agrees with the correction, DVR corrects the information and documents any correction made.

(2) If DVR disagrees that the information is incorrect, DVR will:

(a) Notify you of the decision not to make changes to your case service record, and include instruction with the notice explaining how to provide a written document summarizing the information that you believe is incorrect;

(b) Document the decision not to make changes; and

(c) Place documents you provide to summarize your requested change into your case service record.

NEW SECTION

WAC 388-891A-0130 May DVR share personal information in my case service record with others? (1) DVR may share personal information with others if you sign a written consent or authorization giving permission to release or exchange the information, and:

(a) Another organization or program involved in your VR services needs specific information to serve you effectively; or

(b) You select an employment outcome in a field that customarily requires a background check as a condition of employment or licensure.

(2) DVR may release information that it obtained from other organizations or programs only when permitted by the rules or laws governing the release of protected information applicable to those organizations or programs.

(3) DVR may release, obtain, or maintain personal information without your written consent when:

(a) Required by federal or state laws or regulations;

(b) Required by chapter 26.44 RCW to report the suspected abuse or neglect of a child to either DSHS or law enforcement;

(c) Required by chapter 74.34 RCW to report the suspected abuse, neglect, abandonment, or financial exploitation of a vulnerable adult to DSHS or law enforcement;

(d) A law enforcement agency or DSHS requests information as part of an investigation into abuse, neglect, abandonment, or exploitation of a child or vulnerable adult;

(e) A law enforcement agency or DSHS requests information as part of an investigation into an alleged criminal act by any recipient of DVR services, unless prohibited by federal or state law;

(f) Required by an order signed by a judge, magistrate, or authorized court official (a subpoena duces tecum or request by an attorney is not an order signed by a judge, magistrate, or authorized court official for purposes of releasing information);

(g) The DSHS division of child support requests contact information;

(h) You have requested a fair hearing regarding DVR services with the Washington state office of administrative hearings (OAH);

(i) An organization, agency, or person(s) has an agreement with DVR for an audit, evaluation for program purposes, fulfilling reporting requirements, or research;

(j) DVR reasonably believes you are a danger to yourself or others; or

(k) Otherwise required.

NEW SECTION

WAC 388-891A-0135 How does DVR protect personal information about substance abuse, HIV/AIDS, and sexually transmitted diseases? (1) DVR uses special protections when you share personal information about substance abuse, HIV/AIDS, or sexually transmitted diseases.

(2) DVR asks for your specific permission to copy information of this nature before sharing it with a service provider or organization that is helping you reach your desired employment outcome.

(3) Information about substance abuse must be handled in accordance with 42 C.F.R., Part 2 and any other applicable federal and state laws and regulations.

(4) Information about HIV/AIDS or other sexually transmitted diseases must be handled in accordance with RCW 70.02.220 and any other applicable federal and state laws and regulations.

NEW SECTION

WAC 388-891A-0140 May I review or obtain copies of information in my case service record? (1) You may review or obtain copies of information contained in your case service record by submitting a request to DVR. DVR provides access to or provides copies of records upon request, except in one or more of the following circumstances:

(a) If DVR believes providing the medical, psychological, or other information in your case service record may be harmful to you, DVR only releases the records to a third party that you choose, such as your representative, parent, legal guardian, or a qualified medical professional.

(b) If DVR receives personal information about you from another agency or service provider, DVR may share the records only under the conditions established by the agency or service provider that provided the information.

(c) If a representative has been appointed by a court to represent you, the information must be released to the representative.

(2) DVR provides access or gives you copies of records within five business days of receiving your request. If DVR cannot fulfill your request within five business days, DVR will send you a written notice of the reason(s) the request cannot be met and the date you are granted access or the date the requested information will be provided.

NEW SECTION

WAC 388-891A-0150 How does DVR protect personal information that is released for audit, evaluation, reporting, or research? DVR may release personal information for audit, evaluation for program purposes, fulfilling reporting requirements, or research if the results would improve the quality of life or VR services for people with disabilities. When DVR has obtained personal information from another organization or program, it will release that information only when permitted by the rules or laws governing the release of protected information applicable to that organization or program. Before DVR shares any personal information, the organization, agency, or individual must agree to the following conditions:

(1) The information must only be used by people directly involved in the audit, evaluation, reporting, or research;

(2) The information must only be used for the reasons approved by DVR in advance;

(3) The information must be kept secure and confidential;

(4) The information must not be shared with any other parties, including you or your representative; and

(5) The final product or report produced by the organization, agency, or individual must not contain any personal

information that would identify you without your written consent.

APPEAL RIGHTS

NEW SECTION

WAC 388-891A-0200 May a guardian or another representative request an exception to a rule, mediation, or fair hearing on my behalf with DVR? Your chosen representative, legal guardian, or court-appointed representative may act on your behalf when you would like to request an exception to a rule, mediation, or fair hearing.

NEW SECTION

WAC 388-891A-0205 How do I ask for an exception to a rule in this chapter? (1) You may ask DVR staff to assist you in requesting an exception to a rule. They will help you to write and submit a request.

(2) When you make a request for an exception to a rule in this chapter, you must submit it to the DVR director or designee in writing. The request must include:

- (a) A description of the exception you are requesting;
- (b) The reason you are asking for the exception; and
- (c) The duration of the exception, if applicable.

(3) An exception requesting a medical service that DVR does not otherwise provide may only be made when the service is on a limited basis or for a short duration that you specify in the request.

NEW SECTION

WAC 388-891A-0206 Are there exceptions to rules in this chapter that DVR will not grant? DVR will not grant an exception to the following rules in this chapter:

(1) Rules requiring compliance with state or federal laws and regulations that DVR does not have the authority to change;

(2) Rules describing the services and activities that DVR must not pay for or support, including WAC 388-891A-1101 and 388-891A-1186; and

(3) WAC 388-891A-1060, under which DVR must not provide extended services for an individual who does not meet the definition of a youth with a most significant disability in WAC 388-891A-0100(19).

NEW SECTION

WAC 388-891A-0210 What happens after I submit a request for an exception to a rule? (1) After receiving your request for an exception to a rule, the DVR director or designee decides whether to approve the request based on:

(a) The impact of the exception on accountability, efficiency, choice, satisfaction, and quality of services;

(b) The degree to which your request varies from the WAC; and

(c) Whether the rule or condition is a federal regulation that must not be waived.

(2) The DVR director or designee responds to the request for an exception within ten working days of receiving the request.

(a) If the request is approved, the DVR director or designee provides a written approval that includes:

(i) The specific WAC for which the exception is approved;

(ii) Any conditions of approval; and

(iii) Duration of the exception.

(b) If the request is denied, the DVR director or designee will provide a written explanation of the reasons for the denial.

(3) The DVR director or designee makes the final decision on all requests for exceptions to a rule, as described in WAC 388-440-0001.

NEW SECTION

WAC 388-891A-0211 What does a DVR counselor do when they make a decision to deny my request for VR services, reasonable accommodation, or any other request that affects my participation in VR program services? (1)

If a DVR counselor makes a decision to deny your request for a VR service, reasonable accommodation, or any other request that affects your participation in the VR program, including your participation in pre-employment transition services, the DVR counselor responds to you orally and in writing within ten working days of receiving your request.

(2) The written response you receive will provide:

(a) The reason or reasons for the denial and your appeal rights if you disagree with the decision; or

(b) If additional time is needed to gather supplemental information to answer your request, an explanation of the additional time needed and what supplemental information is needed.

NEW SECTION

WAC 388-891A-0215 What may I do if a DVR counselor makes a decision about my VR services that I do not agree with? (1) If a DVR counselor makes a decision that affects the VR services provided to you as an applicant or recipient of services with which you do not agree, you may try to resolve the disagreement by any one or more of the following:

(a) Seek assistance from the client assistance program, DVR counselor, VR supervisor, or DVR director or their designee;

(b) Request mediation;

(c) Request a fair hearing.

(2) You may request a fair hearing or mediation while you continue to work with the DVR counselor, DVR supervisor, or DVR director or designee to resolve the disagreement. If you reach an agreement prior to the date of the scheduled mediation or fair hearing, you may withdraw your request.

NEW SECTION

WAC 388-891A-0220 What is the client assistance program (CAP)? (1) The client assistance program (CAP) is a program independent of DVR that offers information and

advocacy regarding your rights as a DVR customer and offers assistance to help you receive services.

(2) You may ask for help or information from CAP at any time during the rehabilitation process by asking a DVR staff person for information about how to contact CAP or by calling CAP at 206-721-5999 or toll free at 1-800-544-2121 voice/TTY.

(3) A CAP representative may represent you with DVR if a disagreement occurs that you cannot resolve on your own. CAP attempts to resolve disagreements informally through discussions with the DVR employee(s) involved as a first step. If informal efforts are not successful, CAP may represent you in mediation and in a fair hearing.

(4) CAP services are available at no cost to you.

NEW SECTION

WAC 388-891A-0225 What is mediation? (1) Mediation is a process in which a trained mediator conducts a meeting with you and DVR representative, usually your DVR counselor, to help you settle a disagreement.

(a) The mediator does not work for DVR.

(b) The mediator does not make decisions about your case.

(c) Mediation is voluntary for all parties.

(2) During mediation:

(a) Each party presents information or evidence;

(b) The mediator reviews and explains the laws that apply; and

(c) The mediator helps you and the DVR representative reach an agreement, if possible.

(3) You may ask someone to represent you during the mediation, including a CAP representative, however, you must be present.

(4) Agreements you and DVR reach through mediation are not legally binding.

NEW SECTION

WAC 388-891A-0230 When may I ask for mediation? (1) You may ask for mediation any time you disagree with a decision DVR makes that affects the VR services that DVR provides to you.

(2) DVR will not use mediation to deny or delay your right to a fair hearing.

(3) You may request both mediation and a fair hearing at the same time.

(4) If an agreement is reached during mediation, the fair hearing is canceled.

NEW SECTION

WAC 388-891A-0235 Who arranges and pays for mediation? (1) DVR will schedule mediation in a timely manner at a location that is convenient to all parties.

(2) DVR will pay for costs related to mediation, except costs related to a representative or attorney you ask to attend.

(3) DVR may pay for the VR services you require to participate in mediation.

NEW SECTION

WAC 388-891A-0240 Is information discussed during mediation confidential? (1) Discussions during mediation are confidential and must not be used in a later fair hearing or civil proceeding, if one is held.

(2) Before beginning a mediation session, all parties must sign a statement of confidentiality.

NEW SECTION

WAC 388-891A-0245 If the mediation session results in an agreement, do I receive a written statement of the results? If you and the DVR representative reach an agreement during mediation:

(1) The agreement is documented in writing;

(2) You and the DVR representative sign the written agreement; and

(3) DVR provides you with a copy of the agreement.

NEW SECTION

WAC 388-891A-0250 What is a fair hearing? (1) A fair hearing is a review process outlined under the Administrative Procedure Act, chapter 34.05 RCW and chapter 388-02 WAC that is conducted by an administrative law judge who works for the office of administrative hearings.

(2) During a fair hearing, both you and DVR may present information, witnesses, and documents to support your position.

(3) You may ask someone to represent you, such as an attorney, friend, relative, representative from the client assistance program, or someone else you choose.

(4) No DSHS employee may represent you in an administrative hearing challenging a DVR decision.

(5) The administrative law judge makes a decision after they hear all of the information presented and review any documents submitted and relevant laws and regulations.

NEW SECTION

WAC 388-891A-0255 How do I request a fair hearing? (1) To ask for a fair hearing, send a written request to the office of administrative hearings. You must include the following information in your written request:

(a) Your name, address, and telephone number;

(b) The name of the DSHS program that the fair hearing involves (such as DVR);

(c) A written statement describing the decision and the reasons you disagree; and

(d) Any other information or documents that relate to the matter.

(2) You must submit your request for a fair hearing within forty-five calendar days of the date the DVR counselor issues the decision with which you disagree.

(3) You may ask any DVR employee for instructions or assistance to submit a request for a fair hearing.

NEW SECTION

WAC 388-891A-0260 After I submit a request for a fair hearing, when is it held? The office of administrative hearings holds a fair hearing within sixty days of receipt of your written request for a hearing, unless you or DVR ask for a later hearing date and the office of administrative hearings determines there is a reasonable cause for the delay.

NEW SECTION

WAC 388-891A-0265 What is a prehearing meeting? After you submit a request for a fair hearing, DVR offers you a prehearing meeting. The prehearing meeting may be conducted in person, by telephone, or by another method agreeable to all parties. The purpose of the prehearing meeting is to:

- (1) Clarify the decision with which you disagree;
- (2) Exchange copies of laws, rules, or other information to be presented in the fair hearing;
- (3) Explain how the fair hearing is conducted; and
- (4) Settle the disagreement, if possible.

NEW SECTION

WAC 388-891A-0270 Do I receive a written fair hearing decision? The office of administrative hearings sends you a written report of the findings and decision within thirty days of the fair hearing.

NEW SECTION

WAC 388-891A-0275 Is the fair hearing decision final? (1) The office of administrative hearings decision is final and DVR must implement the decision.

(2) If you do not agree with the office of administrative hearings decision, you may pursue civil action through superior court to review that decision.

NEW SECTION

WAC 388-891A-0295 May DVR suspend, reduce, or terminate my services if I request a fair hearing? DVR must not suspend, reduce, or terminate agreed upon services if you have requested a fair hearing, unless DVR provides evidence that you provided false information or committed fraud or other criminal acts related to your receipt of VR services.

INFORMED CHOICENEW SECTION

WAC 388-891A-0300 What is informed choice? (1) Informed choice is the process by which an individual receiving services from DVR makes decisions about VR goals, VR services, and the service providers necessary to reach those goals. The decision-making process takes into account your culture, values, lifestyle, and characteristics, the availability of resources and alternatives, and general economic conditions. Informed choice involves clear communication to help you understand and use pertinent information in the decision-

making process. Informed choice ensures that VR services promote respect for individual dignity, personal responsibility, self-determination, and the pursuit of meaningful careers.

(2) The informed choice decisions that you make are the basis for achieving a successful employment outcome.

NEW SECTION

WAC 388-891A-0310 How does DVR support the informed choice process? DVR supports the informed choice process by providing counseling and guidance, information, and support to help you make choices that match your unique strengths, resources, priorities, concerns, abilities, capabilities, and interests, including:

- (1) Explaining what choices you can make throughout the rehabilitation process;
- (2) Assisting you to identify and get the information you need to explore the options available; and
- (3) Helping you understand and evaluate the options.

NEW SECTION

WAC 388-891A-0320 What if I do not know how to use the informed choice decision making process? DVR explains how to use informed choice to make decisions about VR goals and services. If it is difficult for you to make informed choices, DVR can help you understand the options available and choose the one that meets your needs.

NEW SECTION

WAC 388-891A-0330 What decisions may I make using informed choice? You have the right to make informed choices about VR goals and services, including but not limited to:

- (1) The providers you will work with and activities you will participate in related to pre-employment transition services;
- (2) The assessment services and service provider(s) you will use to get the information necessary for DVR to determine eligibility and identify your VR needs;
- (3) The specific details of your individualized plan for employment (IPE), including:
 - (a) Type of employment outcome and setting;
 - (b) VR services you need to achieve the employment outcome;
 - (c) Service provider(s) that will provide the service and the setting in which you receive the services; and
 - (d) Method(s) of arranging and paying for services as selected from those available to DVR under state law and agency policy;
- (4) Working with DVR staff to request exceptions to rules in this chapter; and
- (5) Appealing decisions made by DVR.

NEW SECTION

WAC 388-891A-0340 What information and assistance will DVR provide to help me make informed choices about VR services and service providers? To support you in making an informed choice about services and

providers, DVR will help you get the following information, to the extent the information is both available and appropriate:

- (1) Cost, accessibility, and duration of services;
- (2) Consumer satisfaction with those services;
- (3) Qualifications of potential service providers;
- (4) Type(s) of services offered by each service provider;
- (5) Type of setting in which the services are provided, including whether the setting is integrated or nonintegrated; and
- (6) Outcomes achieved by others served by the service provider.

APPLYING FOR VR SERVICES

NEW SECTION

WAC 388-891A-0400 Who may apply for vocational rehabilitation services? Any individual who intends to achieve an employment outcome may apply for VR services.

NEW SECTION

WAC 388-891A-0405 May a guardian or another representative act on my behalf with DVR? You may select someone to act as your representative, as appropriate, while participating in the VR program.

(1) If your representative is not a legal guardian or a court-appointed representative, you must sign a consent form allowing the representative to communicate with DVR on your behalf.

(2) If you have a legal guardian or a court-appointed representative, they must act as your representative when required by the court.

(a) A legal guardian or court-appointed representative must provide DVR with documentation that describes the nature and scope of legal representation.

(b) When required by guardianship or legal representation documents you have provided to DVR, your legal guardian or court-appointed representative must sign the application and other documents that require your signature.

NEW SECTION

WAC 388-891A-0410 How do I apply for VR services? You have completed the application requirements for VR services when you:

(1) Have provided information needed to begin an assessment of eligibility and priority for services;

(2) Are available to participate in assessment services necessary to determine if you are eligible for VR services; and

(3) Have signed an application form provided by DVR or otherwise provided a written request that includes the following information:

- (a) Your name;
- (b) Your contact information, including mailing address and phone or email as appropriate;
- (c) Your birth date and gender;
- (d) Your Social Security number (optional); and
- (e) The date on which you signed the written request.

NEW SECTION

WAC 388-891A-0420 If I do not speak English, how do I communicate with DVR throughout the VR process, beginning at application? If you do not speak English, or if English is not your primary language, you may request another method of communication to enable you to meet with DVR. DVR arranges and pays for interpreter services as described in WAC 388-891A-0720, translation services as described in WAC 388-891A-0860, or both interpreter and translation services as needed for you to communicate with DVR throughout the VR process.

NEW SECTION

WAC 388-891A-0421 What accommodations are available to help me communicate with DVR throughout the VR process, beginning at application? DVR uses equipment, devices, or other services you need to understand and respond to information. Methods DVR may use to communicate with you include, but are not limited to:

- (1) Interpreters;
- (2) Open and closed captioned videos;
- (3) Specialized telecommunications services and audio recordings;
- (4) Brailled and large print materials;
- (5) Materials in electronic formats;
- (6) Augmentative communication devices;
- (7) Graphic presentations; and
- (8) Simple language materials.

NEW SECTION

WAC 388-891A-0425 Does DVR translate written communication for me if I do not speak English? (1) Upon your request, DVR translates the following written communication into your primary language or the primary language of your representative:

- (a) Application for VR services;
- (b) Notification of eligibility or ineligibility;
- (c) Plan for employment;
- (d) Notification of case closure;
- (e) Notification of annual review, if appropriate; and
- (f) Any notice requiring your response or signature to continue receiving services.

(2) DVR translates the Washington Administrative Code (WAC) regarding VR services or service providers into your primary language or the primary language of your representative upon request.

NEW SECTION

WAC 388-891A-0430 If I do not live in Washington, may I receive VR services? The state in which you live has the primary responsibility to provide VR services to you. If you do not live in Washington state, you may apply for VR services if you are present in the state and available to participate in required assessment services or VR services.

NEW SECTION

WAC 388-891A-0431 May a case be open at the same time in more than one VR services program? A case may be open at the same time in more than one VR services program as long as services are coordinated and not duplicated.

NEW SECTION

WAC 388-891A-0440 May I apply for VR services if I am currently receiving or am eligible to receive VR services from the department of services for the blind? (1) The Washington state department of services for the blind, under an agreement with DVR, is the primary agency responsible for providing vocational rehabilitation services to individuals who are blind or have a visual impairment resulting in an impediment to employment.

(2) You may apply for vocational rehabilitation services from the department of services for the blind, DVR, or both agencies.

(3) The department of services for the blind and DVR may coordinate to provide joint services if you would benefit from such coordination as long as the services are not duplicated.

NEW SECTION

WAC 388-891A-0450 May I apply for VR services if I am currently receiving or am eligible to receive VR services from a tribal VR program? (1) If you are eligible for vocational rehabilitation services through a tribe that operates a vocational rehabilitation program, you may apply for VR services from DVR.

(2) The tribal vocational rehabilitation program and DVR may coordinate to provide joint services if you would benefit from such coordination as long as the services are not duplicated.

NEW SECTION

WAC 388-891A-0490 Why does DVR offer me the opportunity to register to vote when I apply for services? The department of social and health services (DSHS) is a voter registration assistance agency. As a division of DSHS, DVR offers you the opportunity to register to vote at application. You do not have to register to vote to receive DVR services.

ELIGIBILITYNEW SECTION

WAC 388-891A-0500 Who is eligible to receive VR services? (1) You are eligible for VR services if a DVR counselor determines that you meet all of the following criteria:

(a) You have a physical or mental impairment that results in a substantial impediment to your ability to prepare for, secure, maintain, advance in, or regain employment;

(b) You require VR services to prepare for, secure, maintain, advance in, or regain employment that matches your

unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) DVR presumes that if you meet the eligibility requirements in subsection (1), you can benefit in terms of an employment outcome.

(3) Before determining that you are unable to benefit from VR services in terms of an employment outcome due to the severity of your disability, DVR must conduct a trial work experience to explore your abilities, capabilities, and capacity to perform in realistic work situations as described in WAC 388-891A-0526 through 388-891A-0535.

NEW SECTION

WAC 388-891A-0505 How does DVR determine if I am eligible? (1) A DVR counselor reviews and assesses information and records about the current status of your disability and determines whether you meet the eligibility requirements outlined in WAC 388-891A-0500.

(a) A DVR counselor bases the determination on observations, education records, medical records, information provided by you or your family, and information provided by other agencies or professionals.

(b) If information or records are not current, available, or sufficient for a DVR counselor to determine if you are eligible, DVR provides the assessment services necessary to get the information needed to make a decision.

(c) VR services used to collect additional information and records to determine eligibility may include medical or psychological evaluations, trial work, assistive technology, personal assistant services, or any other support services necessary to determine if you are eligible.

(d) DVR must not use your participation in pre-employment transition services as an assessment to determine your eligibility for VR services.

(2) When additional assessment services are necessary to get the information needed to make a decision about your eligibility, DVR assists you in making informed choices about the services, providers, and supports you need to participate in those assessment services.

(3) If you decline to provide or consent to the release of records or if you decline to participate in VR services necessary to obtain information required to make an eligibility determination, your VR case service record is closed.

NEW SECTION

WAC 388-891A-0506 Am I presumed to be eligible for VR services if I receive Social Security disability benefits? (1) If you receive Social Security disability insurance (SSDI) or supplemental security income (SSI) benefits under Title II or XVI of the Social Security Act and you intend to achieve an employment outcome, DVR presumes that you are an eligible individual upon verification of your Social Security disability benefits.

(2) If you cannot provide appropriate evidence of your Social Security benefits, such as an award letter from the Social Security Administration, or other type of verification, DVR may request the verification for you.

(3) DVR makes maximum efforts to obtain verification of your Social Security benefits in a reasonable period of time.

(4) After verification of your Social Security benefits, the DVR counselor determines whether you are eligible for VR services.

(5) Although DVR presumes that you are eligible for VR services if your DVR counselor has verified that you receive SSDI or SSI, if the DVR counselor has reason to believe you are not capable of benefiting in terms of an employment outcome after receiving VR services due to the severity of your disability, the DVR counselor conducts an exploration of your abilities, capabilities, and capacity to perform in realistic work situations as described in WAC 388-891A-0526 and 388-891A-0530.

NEW SECTION

WAC 388-891A-0507 Am I required to provide proof of my identity and work status? (1) DVR must verify your identity and work status before paying for VR services.

(2) DVR verifies your identity and work status when you provide the documentation required by the United States Citizenship and Identification Services (USCIS) for USCIS form I-9, "Employment Eligibility Verification."

(3) If you do not provide documentation of your identity and legal work status, DVR may obtain existing records that contain information for use in determining your eligibility.

(4) DVR must not pay for any services other than those described in subsection (3) of this section until you provide proof of your identity and work status.

NEW SECTION

WAC 388-891A-0510 After DVR receives my signed application, how long does it take to make an eligibility determination? (1) DVR will make an eligibility determination as soon as enough information is available, but no longer than sixty days after receiving your completed application materials.

(2) If DVR does not have enough information to determine your eligibility within sixty days, you and a DVR counselor must agree to:

(a) Extend the eligibility period to collect additional information or records because exceptional and unforeseen circumstances prevented the collection of information necessary to make an eligibility determination; or

(b) Conduct a trial work experience, if a DVR counselor is not certain whether VR services will enable you to benefit in terms of an employment outcome because of the severity of your disability.

NEW SECTION

WAC 388-891A-0515 What if I do not agree to extend the eligibility determination period? If you do not agree to extend the eligibility determination period, DVR must close your case service record.

NEW SECTION

WAC 388-891A-0525 What criteria does DVR not consider in its eligibility determination? In making an eligibility determination, DVR does not consider your:

- (1) Type of disability;
- (2) Age, sex, gender, gender identification, sexual orientation, race, color, creed, religion, national origin, veteran status, military status, or marital status;
- (3) Specific rehabilitation needs;
- (4) Type of employment outcome you expect to achieve;
- (5) Source of referral;
- (6) Anticipated cost of services; or
- (7) Income.

NEW SECTION

WAC 388-891A-0526 May DVR determine that I am ineligible for VR services without additional assessment of the severity of my disability? If a DVR counselor cannot presume that you are eligible for VR services or that VR services will enable you to benefit by achieving an employment outcome because of the severity of your disability, DVR requires a trial work experience to determine eligibility. To develop the trial work experience, DVR will:

(1) Conduct an exploration of your abilities, capabilities, and capacity to perform in realistic work situations. This exploration must include an assessment of existing information to the maximum extent possible;

(2) Develop a trial work plan to assess your abilities, capabilities, and capacity to perform in competitive integrated work situations through the use of trial work experiences; and

(3) Make a determination for eligibility based on the information gathered from trial work experience(s).

NEW SECTION

WAC 388-891A-0527 What is a trial work experience? A trial work experience is an assessment DVR requires when a DVR counselor cannot presume that you are eligible for VR services or that VR services will enable you to benefit by achieving an employment outcome because of the severity of your disability. Through that assessment, DVR gathers information to determine that either:

(1) You can benefit from VR services to achieve an employment outcome and are eligible for VR services; or

(2) There is clear and convincing evidence that due to the severity of your disability, you are incapable of benefiting in terms of an employment outcome after receiving VR services and you are ineligible for VR services.

(a) The clear and convincing standard is the highest standard used in our civil system of law and is applied on a case-by-case basis.

(b) Clear and convincing evidence may include assessments that conclude service providers would be unable to meet the individual's needs due to the severity of the individual's disability.

(c) The demonstration of clear and convincing evidence may include, if appropriate, a functional assessment of skill

development activities, with any necessary supports (including assistive technology), in real life settings.

NEW SECTION

WAC 388-891A-0530 What is involved in a trial work experience? (1) You and your DVR counselor develop a trial work plan outlining the specific questions to be answered by the trial work experience.

(2) The plan developed by you and your DVR counselor will identify appropriate VR services and supports to accommodate your rehabilitation needs, such as supported employment, on-the-job training, assistive technology or personal assistant services.

(3) DVR will exhaust all opportunities, consistent with your informed choice and rehabilitation needs, for providing trial work experiences through actual work experiences in integrated community environments.

(4) You will participate in one or more trial work experiences that allow you to try different employment experiences.

(5) Your trial work experience(s) will take place over a period of time that you and your DVR counselor agree to in your trial work plan.

NEW SECTION

WAC 388-891A-0535 What if I cannot participate in or decline to participate in a trial work experience? If you cannot participate in a trial work experience, DVR has exhausted efforts to arrange a trial work experience, or you decline to participate in a trial work experience, DVR will close your case.

NEW SECTION

WAC 388-891A-0540 When may DVR determine that I am not eligible or no longer eligible for DVR services? If you do not or you no longer meet the eligibility criteria in WAC 388-891A-0500, a DVR counselor may determine that you are not eligible or no longer eligible for services:

- (1) At any time after application; and
- (2) After giving you an opportunity to discuss the reasons for the counselor's determination.

NEW SECTION

WAC 388-891A-0545 What happens if DVR determines that I am not eligible or no longer eligible for VR services? (1) Before determining that you are not eligible for VR services or that you are no longer eligible for VR services, a DVR counselor consults with you and gives you an opportunity to discuss the decision.

(2) DVR sends you a notice in writing, or using another method of communication, if needed. The notice includes:

- (a) An explanation of the reason(s) you are not eligible or no longer eligible;
- (b) Your rights to appeal the decision; and
- (c) An explanation of the services available from the client assistance program.

(3) If you are ineligible based on a determination that you cannot achieve employment because of the severity of your disability, DVR reviews the decision within twelve months and annually thereafter at your request.

NEW SECTION

WAC 388-891A-0550 If I am not eligible or no longer eligible for VR services, does DVR help me find other programs and service providers to meet my needs? If DVR determines that you are not eligible or no longer eligible for VR services, DVR provides you with information and refers you to other agencies or organizations that may provide services to meet your employment-related needs.

NEW SECTION

WAC 388-891A-0555 Does a determination that I am eligible for VR services mean that I am entitled to any service? Eligibility for VR services in general does not mean that you are entitled to receive any specific VR service. The specific VR services that you receive are determined on an individual basis.

ORDER OF SELECTION

NEW SECTION

WAC 388-891A-0600 What happens if DVR cannot serve every eligible person? When it is not possible to serve all eligible persons because there are not enough funds or other resources, DVR must:

(1) Continue services without disruption for eligible individuals who have developed and signed an individualized plan for employment;

(2) Establish a statewide waiting list for services;

(3) Implement a process called order of selection that:

(a) Establishes the order in which DVR selects eligible individuals from the waiting list to begin receiving VR services; and

(b) Ensures that individuals with the most significant disabilities are served as a priority over other groups of eligible individuals; and

(4) Provide you with information and guidance (which may include counseling and referral for job placement) about other federal or state programs that offer services to help you meet your employment needs, if available.

NEW SECTION

WAC 388-891A-0610 How are individuals selected for services when DVR is operating under an order of selection? When DVR is operating under an order of selection, individuals are selected for services as follows:

(1) At the time you are determined eligible for VR services, a DVR counselor assigns you to a priority category based on the severity of your disability.

(2) The priority categories are defined in WAC 388-891A-0620 through 388-891A-0660.

(3) As resources become available for DVR to serve additional individuals, DVR selects names from the waiting list in the priority category being served at that time.

(4) Within a priority category, the date you applied for VR services determines the order in which you are selected from the waiting list.

(5) DVR may provide you specific services or equipment without requiring that you wait for services under an order of selection if:

(a) You are at immediate risk of losing your job in a competitive integrated setting for reasons related to your disability; and

(b) You require specific services or equipment in the very near future that will enable you to keep your job.

(6) If you have successfully achieved an employment outcome as described in WAC 388-891A-1310, are currently employed, and require post-employment services, you are not required to wait for services under an order of selection.

NEW SECTION

WAC 388-891A-0611 What criteria must DVR not use when assigning you to a priority of service of category? DVR must not use any of the following criteria when assigning you to a priority of service category:

(1) Any duration of residency requirement, provided the individual is present in the state;

(2) Type of disability;

(3) Age, sex, gender, gender identification, sexual orientation, race, color, creed, religion, national origin, veteran status, military status, or marital status;

(4) Source of referral;

(5) Type of expected employment outcome;

(6) The need for specific vocational rehabilitation services, except those services described in WAC 388-891A-0610 (5) and (6);

(7) The anticipated cost of services required by an individual; or

(8) The income level of an individual or an individual's family.

NEW SECTION

WAC 388-891A-0615 May I receive pre-employment transition services when DVR has assigned me to a priority of service category with a waiting list for services? If you are a student with a disability who DVR has assigned to a priority of service category with a waiting list for services, you may continue to receive pre-employment transition services while waiting for services as long as you began to receive pre-employment transition services prior to DVR determining you eligible for services.

NEW SECTION

WAC 388-891A-0620 What are the criteria for priority category one? DVR determines you are in priority category one (an individual with a most significant disability) if you are determined eligible for vocational rehabilitation services and you meet the following criteria:

(1) You require multiple VR services over an extended period of time; and

(2) You experience serious functional limitations in four or more of the following areas in terms of an employment outcome:

(a) Mobility;

(b) Communication;

(c) Self-care;

(d) Cognition and learning (self-direction);

(e) Interpersonal;

(f) Work tolerance; or

(g) Work skills.

NEW SECTION

WAC 388-891A-0630 What are the criteria for priority category two? DVR determines you are in priority category two if you are determined eligible for vocational rehabilitation services and you meet the following criteria:

(1) You require multiple VR services over an extended period of time; and

(2) You experience serious functional limitations in three of the following areas in terms of an employment outcome:

(a) Mobility;

(b) Communication;

(c) Self-care;

(d) Cognition and learning (self-direction);

(e) Interpersonal;

(f) Work tolerance; or

(g) Work skills.

NEW SECTION

WAC 388-891A-0640 What are the criteria for priority category three? DVR determines you are in priority category three if you are determined eligible for vocational rehabilitation services and you meet the following criteria:

(1) You require multiple VR services over an extended period of time; and

(2) You experience serious functional limitations in two of the following areas in terms of an employment outcome:

(a) Mobility;

(b) Communication;

(c) Self-care;

(d) Cognition and learning (self-direction);

(e) Interpersonal;

(f) Work tolerance; or

(g) Work skills.

NEW SECTION

WAC 388-891A-0650 What are the criteria for priority category four? DVR determines you are in priority category four if you are determined eligible for vocational rehabilitation services and you meet the following criteria:

(1) You require multiple VR services over an extended period of time; and

(2) You experience serious functional limitations in one of the following areas in terms of an employment outcome:

(a) Mobility;

- (b) Communication;
- (c) Self-care;
- (d) Cognition and learning (self-direction);
- (e) Interpersonal;
- (f) Work tolerance; or
- (g) Work skills.

NEW SECTION

WAC 388-891A-0660 What are the criteria for priority category five? DVR determines you are in priority category five if you are determined eligible for vocational rehabilitation services, but you do not meet the criteria for priority categories one through four.

VR SERVICESNEW SECTION

WAC 388-891A-0700 What vocational rehabilitation services are available to individuals from DVR? The following VR services are available to individuals from DVR:

- (1) Assessment services;
- (2) Benefits planning services;
- (3) Independent living evaluation and services;
- (4) Information and referral services;
- (5) Interpreter services;
- (6) Job-related services;
- (7) Maintenance services;
- (8) Occupational licenses;
- (9) Personal assistance services;
- (10) Physical and mental restoration services;
- (11) Pre-employment transition services;
- (12) Rehabilitation technology services;
- (13) Self-employment services;
- (14) Services to family members;
- (15) Substantial vocational rehabilitation counseling and guidance services;
- (16) Tools, equipment, initial stocks, and supplies;
- (17) Training services;
- (18) Transition services;
- (19) Translation services;
- (20) Transportation services;
- (21) Other services; and
- (22) Post-employment services.

NEW SECTION

WAC 388-891A-0705 What are assessment services? Assessment services include a review of existing data and the provision of assessment activities, including a trial work experience, that are necessary to determine:

- (1) Whether you are eligible for VR services;
- (2) Severity of disability and assignment of priority category in the event DVR must utilize an order of selection; and
- (3) The employment outcome, including supported employment, your rehabilitation needs, and the VR services to be included in an individualized plan for employment.

NEW SECTION

WAC 388-891A-0706 What are examples of assessments that DVR conducts, obtains, or purchases? (1) Some of the assessments that DVR may use include, but are not limited to:

- (a) Assistive technology evaluation;
 - (b) Background checks, including criminal history background checks;
 - (c) Community based assessment (CBA);
 - (d) Driving evaluation;
 - (e) Substance use disorder assessment;
 - (f) Educational achievements;
 - (g) Environmental factors that affect your employment and rehabilitation needs;
 - (h) Independent living evaluation;
 - (i) Physical assessment;
 - (j) Psychological or neuropsychological evaluation;
 - (k) Psychosexual evaluation or a sexual offender behavior assessment;
 - (l) Risk or safety assessment to determine whether a risk may exist to you or others;
 - (m) Self-employment feasibility assessment;
 - (n) Supported employment assessment of ongoing and extended support needs;
 - (o) Training as an assessment;
 - (p) Trial work experience as outlined in WAC 388-891A-0526 through 388-891A-0530 to determine you are eligible, ineligible, or no longer eligible;
 - (q) Vocational, interest, and aptitude assessment;
 - (r) Work experience, both paid and unpaid; and
 - (s) Other assessments.
- (2) DVR conducts assessments using information provided by you and your family to the extent that it is available.
- (3) DVR will obtain information or purchase assessment services if needed for making the determinations described in WAC 388-891A-0705. Information may be obtained, as described in WAC 388-891A-0103, from other programs and agencies that serve you.
- (4) DVR will not utilize information generated through your participation in pre-employment transition services to determine eligibility for any other vocational rehabilitation services.

NEW SECTION

WAC 388-891A-0707 When may DVR require that I participate in a risk assessment, and how are the results of a risk assessment used by DVR? If a DVR counselor receives information or records that reasonably lead the DVR counselor to believe you have a history of violent or predatory behavior:

- (1) A DVR counselor will discuss your history with you to better understand your situation.
- (2) You must participate in a risk assessment conducted by a licensed psychiatrist, psychologist, counselor, certified sex offender treatment provider, or other qualified professional prior to developing a plan for employment. The risk assessment is for the purpose of determining the level of risk you present to yourself, members of the community, or others in an employment situation.

(a) DVR must consider the results and recommendations of the risk assessment in developing the plan for employment, including any restrictions relating to employment outcome or employment setting.

(b) If the results of the risk assessment indicate a potential risk to individuals you may encounter while receiving services or working, you must consent to release information about the behavior to a potential service provider or potential employer prior to referral for services.

(3) If the results and recommendations of a current risk assessment are available, the DVR counselor must consider those results and recommendations when developing the plan for employment, including any restrictions relating to employment outcome or setting.

(a) For the purposes of determining a current risk, the DVR counselor must use assessments conducted within the previous two years.

(b) If any information becomes available that would require a reevaluation of a previous assessment, you must participate in a new risk assessment.

(c) If the results of a current risk assessment indicate a potential risk to individuals you may encounter while receiving services or working, you must consent to release information about the behavior to a potential service provider or potential employer prior to referral for services.

(4) If you are currently participating in a treatment plan and you and your provider agree to release reports to DVR that demonstrate your current status, the DVR counselor must consider that information when developing the plan for employment, including any restrictions relating to employment outcome or setting. If the information contained in your provider's reports indicates a potential risk to individuals you may encounter while receiving services or working, you must consent to release information about the behavior to a potential service provider or potential employer prior to referral for services.

NEW SECTION

WAC 388-891A-0708 What happens if I decline to participate in a risk assessment or release reports of my status in a treatment program? When the conditions described in WAC 388-891A-0707 apply, the DVR counselor closes your case service record if you do not cooperate by declining:

- (1) To participate in or consent to providing the results of a risk assessment; or
- (2) To report your status in a treatment program.

NEW SECTION

WAC 388-891A-0709 What are benefits planning services? Benefits planning services are provided to help you understand how earning income through employment will impact your Social Security disability insurance (SSDI), supplemental security income (SSI), or other government benefits. Benefits planning services also help you understand how to use work incentives or other benefit programs that may enable you to achieve an employment outcome.

NEW SECTION

WAC 388-891A-0710 What are independent living services and evaluation? Independent living services and evaluation includes services provided to:

(1) Identify issues that present problems for you in achieving an employment outcome and services you need to address the issues;

(2) Help you manage the services you need to live independently, get information about benefits available to you, and about your rights and responsibilities;

(3) Help you set personal goals, make decisions about life issues and employment, and help your family with issues related to your disability and independence;

(4) Help you learn to manage areas such as budgeting, meal preparation and nutrition, shopping, hygiene, time management, recreation, community resources, and attendant management; and

(5) Find out about housing resources and make decisions about changing to a more independent living arrangement.

NEW SECTION

WAC 388-891A-0715 What are information and referral services? Information and referral services include information and assistance to help you explore and gain access to employment services or benefits available to you from other programs, including other programs within the workforce development system.

NEW SECTION

WAC 388-891A-0720 What are interpreter services? Interpreter services are services that help to ensure you are able to communicate effectively while receiving services from DVR. Interpreter services may include real-time captioning services, sign language or oral interpretation services for individuals who are deaf or hard of hearing, and tactile interpretation services for individuals who are deaf-blind.

NEW SECTION

WAC 388-891A-0725 What is job search assistance? Job search assistance activities support and assist you in searching for an appropriate job. Job search assistance may include help in resume preparation, identifying appropriate job opportunities, developing interview skills, and making contacts with companies on your behalf.

NEW SECTION

WAC 388-891A-0730 What is job placement assistance? Job placement assistance includes a DVR employee or contracted provider working directly with employers to identify and secure competitive integrated employment that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. You and your DVR counselor (as well as the provider, if appropriate) agree upon the job to be secured. Job placement is accomplished when you have officially completed your first day of work.

NEW SECTION

WAC 388-891A-0731 What are customized employment services? (1) Customized employment services are services to facilitate a placement in customized employment.

(2) These services are carried out through flexible strategies, which include job exploration by the individual and working with an employer to facilitate placement, including:

(a) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(b) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(c) Using a professional representative chosen by you, or representing yourself if you choose, to work with an employer to facilitate placement; and

(d) Providing services and supports at the job location.

NEW SECTION

WAC 388-891A-0732 What are job retention services? Job retention services are provided after your first day of work and while you remain employed. Job retention services may include any vocational rehabilitation service necessary to help you maintain employment.

NEW SECTION

WAC 388-891A-0735 What are maintenance services? (1) Maintenance services include monetary support for expenses such as food, shelter, or clothing that exceed your usual living expenses and are necessary for you to participate in another VR service. The following are examples of maintenance services, but they may not apply to every situation or substitute for the professional judgment of an individual counselor:

(a) A uniform or other suitable clothing required to look for or get a job;

(b) Short-term lodging and meals required to participate in assessment or training services not within commuting distance of your home; and

(c) Initial one-time costs, such as security deposits or charges to begin utility services at a home in which you will live, when you relocate for a job.

(2) As described in WAC 388-891A-0206 and 388-891A-1101, DVR must not grant any exception to provide for your usual living expenses as a maintenance service.

NEW SECTION

WAC 388-891A-0740 What are occupational licenses? Occupational licenses are licenses, permits, or certificates showing that you meet certain standards, have accomplished certain achievements, or otherwise qualify to engage in a business, specific occupation or trade, or other work.

NEW SECTION

WAC 388-891A-0745 What are personal assistance services? (1) Personal assistance services include a range of services provided by at least one person to help you perform daily living activities on or off the job that you would perform without assistance if you did not have a disability. Examples include, but are not limited to:

(a) Reader services for individuals who cannot read print because of blindness or other disability. Reader services include both reading aloud and the transcription of printed information into Braille or sound recordings. Reader services are for people who are blind and individuals unable to read because of serious neurological disorders, specific learning disabilities, or other physical or mental impairments.

(b) Personal attendant services are personal services that an attendant performs for an individual with a disability, including, but not limited to, bathing, feeding, dressing, and providing mobility and transportation.

(2) DVR only provides personal assistance services in connection with one or more other VR services.

NEW SECTION

WAC 388-891A-0750 What are physical and mental restoration services? (1) Physical and mental restoration services are used to diagnose and treat physical and mental impairments when you need those services to prepare for, secure, maintain, advance in, or regain employment.

(2) DVR provides physical and mental restoration services only when financial support is not readily available from another source, such as health insurance.

(3) Physical and mental restoration services include:

(a) Corrective surgery or therapy if your disabling condition is stable or slowly progressive and the service is expected to substantially modify, correct, or improve a physical or mental impairment that is a substantial impediment to employment for you within a reasonable period of time;

(b) Diagnosis and treatment of mental or emotional disorders by qualified personnel who meet state licensing requirements;

(c) Dental treatment;

(d) Nursing services;

(e) Necessary hospitalization (in-patient or outpatient) in connection with surgery or treatment and clinic services;

(f) Prescription drugs and supplies;

(g) Prosthetic and orthotic devices;

(h) Eyeglasses and visual services, including visual training and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel who meet state licensing requirements;

(i) Podiatry;

(j) Physical therapy;

(k) Occupational therapy;

(l) Speech or hearing therapy;

(m) Mental health services;

(n) Treatment of acute or chronic medical conditions and emergencies that result from providing physical and mental

restoration services or are related to the condition being treated;

(o) Special services for the treatment of end-stage renal disease; and

(p) Other medical or medically related rehabilitation services.

NEW SECTION

WAC 388-891A-0755 What are the medical treatments DVR does not pay for? DVR does not pay for any of the following medical treatments other than as an exception to policy, as described in WAC 388-891A-0205:

(1) Maintenance of your general health or fitness;

(2) Cosmetic procedures, such as facelifts, liposuction, and cellulite removal;

(3) Maternity care;

(4) Hysterectomies, elective abortions, sterilization, and contraceptive services as independent procedures;

(5) Drugs not approved by the U.S. Food and Drug Administration for general use or by state law;

(6) Life support systems, services, and hospice care;

(7) Transgender services including surgery and medication management;

(8) Homeopathic and herbalist services, Christian Science practitioners, or theological healers;

(9) Treatment that is experimental, obsolete, investigational, or otherwise not established as effective medical treatment.

NEW SECTION

WAC 388-891A-0760 What are pre-employment transition services? (1) Pre-employment transition services are activities that offer an early start at career exploration.

(2) Pre-employment transition services are provided to you while you are in school and eligible for an individualized educational program (IEP) or otherwise are regarded as an individual with a disability under section 504 of the Rehabilitation Act of 1973, as amended.

(3) Pre-employment transition services are coordinated between schools and DVR to help you prepare for and go to work in the community.

(4) Pre-employment transition services are available to an eligible or potentially eligible student with a disability as defined in WAC 388-891A-0010(16), and as described in WAC 388-891A-0615.

(5) Pre-employment transition services are not available if you have been determined ineligible for services.

(6) Pre-employment transition services include:

(a) Job exploration counseling;

(b) Work-based learning experiences provided in an integrated setting and paid at a competitive rate to the maximum extent possible;

(c) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

(d) Workplace readiness training to develop social skills and independent living; and

(e) Instruction in self-advocacy that may include peer mentoring.

(7) If you need more individualized services (such as job coaching, orientation and mobility training, travel expenses, uniforms, or assistive technology), you must apply and be determined eligible for vocational rehabilitation services and develop and have an approved individualized plan for employment.

NEW SECTION

WAC 388-891A-0765 What is job exploration counseling? Job exploration counseling activities promote considerations of opportunities and informed decision-making regarding career options to help students with disabilities understand post-school choices and opportunities. Job exploration counseling may include, but is not limited to, discussion of:

(1) Your vocational interest inventory results;

(2) In-demand occupations;

(3) Career pathways; and

(4) Local labor market information.

NEW SECTION

WAC 388-891A-0766 What are work-based learning experiences? (1) Work-based learning experiences are in-school or after-school opportunities, or experiences outside the traditional school setting, that use the workplace or real work to provide students with disabilities the knowledge and skills that connect school experiences to real-life work activities and future career opportunities.

(2) Work-based learning experiences in a group setting may include, but are not limited to:

(a) Coordinating a school-based program of job training and informational interviews to research employers;

(b) Worksite tours to learn about necessary job skills;

(c) Job shadowing; and

(d) Mentoring opportunities in the community.

(3) Work-based learning experiences on an individual basis may include, but are not limited to:

(a) Work experiences to explore your area of interest through internships;

(b) Apprenticeships (not including pre-apprenticeships and registered apprenticeships);

(c) Short-term employment; and

(d) On-the-job trainings located in the community.

(4) Work-based learning experiences are provided in an integrated environment in the community to the maximum extent possible.

(5) When paid, work-based learning experiences for students with disabilities must be compensated at a competitive wage to the extent competitive wages are paid to students without disabilities.

NEW SECTION

WAC 388-891A-0767 What is counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education? (1) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education in a

group setting to students with disabilities may include, but is not limited to, information on:

- (a) Course offerings;
- (b) Career options;
- (c) The types of academic and occupational training needed to succeed in the workplace; and
- (d) Postsecondary opportunities associated with career fields.

(2) This information may also be provided on an individual basis to a student with a disability, and may include, but is not limited to, advising students and parents or representatives on:

- (a) Academic curricula;
- (b) College application and admissions processes;
- (c) Completing the Free Application for Federal Student Aid (FAFSA); and
- (d) Resources that may be used to support individual student success in education and training, which may include disability support services.

NEW SECTION

WAC 388-891A-0768 What is workplace readiness training? Workplace readiness training provides opportunities for students with disabilities to learn about and develop both social skills and independent living. Training may include, but is not limited to:

- (1) Workshops on workplace behavior, understanding employer expectations for punctuality and performance, and other soft skills necessary for employment;
- (2) Financial literacy;
- (3) Orientation and mobility skills; and
- (4) Job-seeking skills.

NEW SECTION

WAC 388-891A-0769 What is instruction in self-advocacy? (1) Self-advocacy instruction provides opportunities for students with disabilities to learn about rights, responsibilities, and how to request accommodations or services and supports needed during the transition from secondary to post-secondary education and employment. Self-advocacy instruction teaches students with disabilities to articulate their needs and make informed decisions about the supports necessary to meet those needs.

(2) Self-advocacy instruction may include peer mentoring from individuals with disabilities working in competitive integrated employment. Examples of self-advocacy instruction include but are not limited to workshops or job clubs in areas such as:

- (a) Developing goals;
- (b) Time management and organization;
- (c) Balanced life planning;
- (d) Peer support;
- (e) Mentoring groups;
- (f) Accessing community resources such as health care, recreation, and social opportunities; and
- (g) Using assistive technology to manage life skills.

NEW SECTION

WAC 388-891A-0770 What is rehabilitation technology? Rehabilitation technology means the use of technologies, engineering methods, or sciences to design, develop, test, evaluate, apply, and distribute technology to address those areas in which you experience functional loss, such as mobility, communication, hearing, vision, and cognition. Rehabilitation technology includes:

(1) Assistive technology devices, equipment, or products used to increase, maintain, or improve the functional capabilities of an individual with a disability including, but not limited to:

- (a) Telecommunications devices;
- (b) Sensory aids and devices, including hearing aids, telephone amplifiers and other hearing devices, captioned videos, taped text, Brailled and large print materials, electronic formats, graphics, simple language materials, and other special visual aids;
- (c) Vehicle modifications; and
- (d) Computer and computer-related hardware and software that is provided to address a disability-related limitation.

(2) Services that assist you in the selection, acquisition, or use of an assistive technology device, including services to:

- (a) Evaluate your needs in performing activities in your daily environment;
- (b) Select, design, fit, customize, adapt, apply, maintain, repair, or replace an assistive technology device, including written policies, plans, guarantees, or warranties (initial or extended);
- (c) Coordinate and use other therapies or services with assistive technology devices, such as education and rehabilitation plans and programs; and
- (d) Train or give technical assistance to professionals, employers, family members, or others who provide services to you, hire you, or are involved in your major life activities.

(3) Services that apply engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems you face in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, training, and integration into the community.

NEW SECTION

WAC 388-891A-0785 What are self-employment services? (1) Self-employment services include consultation, technical assistance, and start-up costs to help you establish a small business to become self-employed.

(2) When you sign your individualized plan for self-employment, you agree to provide information about the income of your small business for up to one year after you successfully close your case.

(3) The conditions that apply for DVR to approve and pay for self-employment services are outlined in WAC 388-891A-0010, 388-891A-1100, 388-891A-1185, 388-891A-1186, 388-891A-1195, and 388-891A-1196.

NEW SECTION

WAC 388-891A-0790 What vocational rehabilitation services may DVR provide for my family member(s)? DVR may provide vocational rehabilitation services for a family member if the services are necessary for you to achieve an employment outcome. A family member is anyone who meets the definition of family member outlined in WAC 388-891A-0010(7).

NEW SECTION

WAC 388-891A-0791 What types of nonpermanent structural modifications may be provided at the place where I live or where I work? Nonpermanent structural modifications that make physical changes to the place where you live or your worksite are provided for necessary disability access or to conduct employment. The conditions that apply for DVR to pay for nonpermanent structural modifications are outlined in WAC 388-891A-1194, 388-891A-1195, and 388-891A-1196.

NEW SECTION

WAC 388-891A-0800 What is substantial vocational rehabilitation counseling and guidance? Substantial vocational rehabilitation counseling and guidance includes intensive counseling and guidance provided by a DVR counselor throughout the rehabilitation process to help you address medical, family, or social issues and exercise informed choice, including vocational counseling and other counseling and guidance that addresses a wider range of concerns than an employment-focused counseling and guidance relationship.

NEW SECTION

WAC 388-891A-0805 What are tools, equipment, initial stocks, and supplies? (1) Tools and equipment are materials and hardware you require to carry out the duties of your job.

(2) Initial stocks and supplies are specific to self-employment and include the goods for inventory required for you to start your small business.

NEW SECTION

WAC 388-891A-0810 What are training services? (1) Training services are designed to help you gain knowledge, skills, and abilities needed to achieve an employment outcome. Training services include, but are not limited to:

- (a) On-the-job training;
- (b) Postsecondary training;
- (c) Occupational or vocational training;
- (d) Basic education or literacy training;
- (e) Apprenticeship training;
- (f) Job readiness training;
- (g) Disability related skills training; and
- (h) Other miscellaneous training.

(2) The conditions that apply for DVR to pay for postsecondary training services at an institution of higher educa-

tion are outlined in WAC 388-891A-1160 through 388-891A-1163.

NEW SECTION

WAC 388-891A-0815 What is on-the-job training? On-the-job training is training an employer provides to you once you are placed in a job to help you learn the skills you need. With on-the-job training, you are hired by an employer and DVR pays the employer a training fee to cover the extra costs associated with training you. There is an expectation that employment with the employer will continue when the on-the-job training is completed. The employer must sign an agreement to include at a minimum:

- (1) Training to be provided, including skills to be learned and training methods;
- (2) Duration or number of hours of training to be provided;
- (3) How and when the employer will evaluate and report your progress to DVR;
- (4) An agreed-upon fee based on the employer's costs to provide the training; and
- (5) Payment criteria.

NEW SECTION

WAC 388-891A-0820 What is postsecondary training? Postsecondary training means full-time or part-time academic training above the high school level leading to a degree, academic certificate, or other recognized educational credential. Postsecondary training is provided by a college or university, community college, junior college, or technical college.

NEW SECTION

WAC 388-891A-0825 What is occupational or vocational training? Occupational or vocational training is specific job skill training that does not lead to an academic degree, but is provided by a community college or business, vocational, technical, or trade school to prepare for work in a specific occupation.

NEW SECTION

WAC 388-891A-0830 What is basic education or literacy training? Basic education or literacy training is training that addresses basic academic skills, such as reading, that are necessary to participate in further training on your IPE or work in competitive integrated employment.

NEW SECTION

WAC 388-891A-0836 What is apprenticeship training? Apprenticeship training is a work-based employment and training program registered with the Washington state department of labor and industries that provides:

- (1) A combination of hands-on, on-the-job work experience in a skilled occupation with related classroom instruction;
- (2) Structured mentoring;

- (3) Wage increases as an apprentice's skills increase; and
- (4) An industry recognized certificate of completion at the end of the program.

NEW SECTION

WAC 388-891A-0837 What is job readiness training? Job readiness training is training that prepares you for work, including but not limited to training that addresses:

- (1) Appropriate clothes and grooming for the job;
- (2) Getting to work on time;
- (3) Workplace behavior; and
- (4) How to increase productivity.

NEW SECTION

WAC 388-891A-0838 What is disability-related skills training? Disability-related skills training includes but is not limited to training that addresses:

- (1) Orientation and mobility;
- (2) The use of low vision aids;
- (3) Braille;
- (4) Speech reading;
- (5) Sign language; and
- (6) Cognitive training/retraining.

NEW SECTION

WAC 388-891A-0840 What other training does DVR provide? DVR provides other miscellaneous training services that are not identified in another section, such as high school completion and tutoring.

NEW SECTION

WAC 388-891A-0855 What are transition services? Transition services are any of the VR services listed under WAC 388-891A-0700 and are a coordinated set of activities for a student or youth with a disability that:

- (1) Promote movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Address your individual needs, taking into account preferences and interests;
- (3) Include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, functional vocational evaluation and acquisition of daily living skills; and
- (4) Promote or facilitate the achievement of the employment outcome identified in your individualized plan for employment.

NEW SECTION

WAC 388-891A-0860 What are translation services? Translation services include oral and written translation into your primary language to access DVR services and communicate with DVR staff.

NEW SECTION

WAC 388-891A-0865 What are transportation services? Transportation services include travel and related expenses necessary for you to participate in VR services, such as a bus pass, fuel for a vehicle, services to facilitate your driving, the purchase or repair of a vehicle, or moving expenses. The conditions that apply for DVR to purchase and loan a vehicle to you are outlined in WAC 388-891A-1174, 388-891A-1175, and 388-891A-1176.

NEW SECTION

WAC 388-891A-0866 What are transportation services to facilitate my driving? Services to facilitate your driving include, but are not limited to:

- (1) Mileage/gasoline allowance;
- (2) Driver licenses;
- (3) Vehicle license tabs; and
- (4) Vehicle repairs.

NEW SECTION

WAC 388-891A-0880 What other services does DVR provide? With the exception of the items and services outlined in WAC 388-891A-1101 and 388-891A-1186, DVR provides other services not identified in this chapter when the service is needed for you to achieve an employment outcome as described in WAC 388-891A-0010(4) and the service is both legal and necessary to address a barrier to employment.

NEW SECTION

WAC 388-891A-0890 What are post-employment services? Post-employment services include one or more vocational rehabilitation services provided if:

- (1) Your case was closed because you achieved an employment outcome;
- (2) Your rehabilitation needs are limited in scope and duration; and
- (3) You need post-employment services to maintain, advance in, or regain employment that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

VOCATIONAL ASSESSMENT AND IPE DEVELOPMENT

NEW SECTION

WAC 388-891A-0900 What is a vocational assessment? (1) A vocational assessment helps to identify the type of assistance you will need to prepare for, secure, maintain, advance in, or regain employment. Each person determined eligible for VR services completes a vocational assessment to identify their VR needs.

(2) A comprehensive vocational assessment may be completed by each person determined eligible for VR services, and includes more specific information about VR needs than the DVR counselor considered during the eligibility determination.

(3) A comprehensive vocational assessment includes a variety of services, including counseling and guidance, to determine your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(4) The purpose of a comprehensive vocational assessment is to collect and review information you need to select your employment goal, including a thorough exploration of labor market information and job trends, as well as determining the VR services you need to achieve the employment outcome.

(5) A comprehensive vocational assessment is limited to services necessary to select an employment goal and develop a plan for employment.

(6) To the maximum extent possible and appropriate, DVR will use existing information to complete a comprehensive vocational assessment. Existing information may include, but is not limited to, information used to determine eligibility and information provided by you and your family.

(7) A comprehensive vocational assessment may include any one or more of the following as needed:

(a) Assessment(s) of the personality, interests, interpersonal skills, intelligence and related functional abilities, educational abilities, work experience, vocational aptitudes, personal and social adjustments, employment opportunities, and other vocational, educational, cultural, social, recreational, and environmental factors that affect your employment and rehabilitation needs;

(b) Assessment(s) of work, in paid or unpaid settings, as a method of evaluating and developing work behavior and capacities necessary to achieve an employment outcome, including work skills, attitudes, habits, tolerances, and social behavior;

(c) Referral for assistive technology services to assess whether services or devices could increase your ability to perform work;

(d) Benefits planning to recipients of Social Security disability insurance (SSDI) or supplemental security income (SSI) benefits under Title II or Title XVI of the Social Security Act to understand how income may affect those benefits.

NEW SECTION

WAC 388-891A-0905 Are there circumstances in which DVR requires me to participate in additional assessment activities? (1) If the DVR counselor becomes aware of a condition or circumstance after you have developed an IPE that may affect your ability to achieve the employment outcome identified in your IPE, the DVR counselor may conduct necessary assessment services to determine whether you are capable of benefiting in terms of the specific employment outcome identified in your IPE.

(2) If you have a documented history of violent or predatory behavior that reasonably leads a DVR counselor to believe you may be a threat to yourself or others, you must participate in assessment services necessary to determine the level of risk.

(3) If a DVR counselor determines, based on an assessment conducted by a qualified professional, that your employment may pose a threat to the safety of you or others because you meet the conditions outlined in WAC 388-

891A-0110, an appropriately qualified professional must evaluate the employment outcome and employment setting you choose for risk.

(4) If you decline to authorize the release of information to DVR or participate in VR services necessary to collect pertinent information and your refusal prevents the continued development of an appropriate IPE, the DVR counselor may close your case service record.

NEW SECTION

WAC 388-891A-0910 Do I need to tell my DVR counselor about my criminal history or negative actions that may appear in a background check for employment? (1) You must disclose information to DVR before you develop a plan for employment about conditions or circumstances, such as a criminal record, actions against a professional license, identity and work status, that restrict the type of employment you can legally perform.

(2) If you select an employment outcome in a field that customarily requires a background check as a condition of employment, DVR must obtain a background check as described in WAC 388-891A-0103 that verifies you are not excluded from employment in the field or specific job prior to IPE development.

(3) If a DVR counselor receives information or records that reasonably lead the DVR counselor to believe you have a criminal history or history of actions against a professional license, a background check is required to determine the next steps in your IPE development. The DVR counselor may require you to participate in assessment(s) to determine the impact of your criminal history or history of other negative actions on achieving a successful employment outcome.

NEW SECTION

WAC 388-891A-0911 What is required for DVR to approve an IPE with a goal in self-employment? (1) A DVR counselor will approve an IPE with an outcome in self-employment if:

(a) You complete assessment services as outlined in WAC 388-891A-0900 to determine VR service needs;

(b) You participate in a feasibility study for your self-employment business and you and your DVR counselor agree that the IPE with an outcome in self-employment is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(c) The feasibility study indicates that the self-employment outcome is:

(i) Feasible;

(ii) Sustainable; and

(iii) Adequate to meet your financial needs.

(2) The costs that DVR may pay to support an IPE with self-employment as the employment outcome are outlined in WAC 388-891A-1185.

(3) The costs that DVR must not pay to support an IPE with self-employment as the employment outcome are outlined in WAC 388-891A-1186.

(4) The projected income you will earn from your business must be at least comparable to the income received by

other individuals who are self-employed in similar occupations or performing similar tasks and who have similar training, experience, and skills. DVR does not support activities that do not result in an income-producing self-employment outcome.

NEW SECTION

WAC 388-891A-0912 What are the factors that a DVR counselor considers in determining whether to support an employment outcome in self-employment? In addition to WAC 388-891A-0911, 388-891A-1185, 388-891A-1186, 388-891A-1195, and 388-891A-1196, the DVR counselor considers the following when determining whether to support an employment outcome in self-employment:

- (1) The results of the feasibility study for your proposed self-employment outcome;
- (2) Your ability to maintain and retain a self-employment business, including, but not limited to your:
 - (a) Disability-related issues or concerns;
 - (b) Barriers to employment and how self-employment addresses these barriers;
 - (c) Strengths and interpersonal skills;
 - (d) Resources, including financial resources;
 - (e) Money management skills;
 - (f) Credit history, including bankruptcy;
 - (g) Overdue child support;
 - (h) Tax or debt issues;
 - (i) Other legal proceedings;
 - (j) Long-term supports, if supported employment is required; and
 - (k) Income needs.
- (3) You must have resolved bankruptcy or other legal proceedings, overdue child support, and overdue taxes prior to the development of an individualized plan for employment (IPE) with self-employment as the employment outcome. DVR does not assist with the payment of court fees, attorney fees, fines, or penalties related to illegal acts that result from any civil or criminal legal proceedings or related matters.

NEW SECTION

WAC 388-891A-0913 What conditions apply for DVR to support self-employment as a sole proprietorship or a limited liability company? (1) DVR does not support self-employment in a nonprofit organization because you do not have legal standing with a nonprofit organization.

- (2) DVR supports self-employment:
 - (a) As a sole proprietorship; or
 - (b) As a partnership or limited liability company (LLC) if you manage and hold controlling interest (fifty-one percent or more).
- (3) Any business partners must acknowledge through their signature that any equipment, tools, initial stocks, and supplies purchased by DVR are the property of DVR until transferred to you.

NEW SECTION

WAC 388-891A-0915 What is an individualized plan for employment (IPE)? An individualized plan for employ-

ment (IPE) is a DVR form that documents important decisions you and a DVR counselor make about vocational rehabilitation services. The contents of the IPE are described in WAC 388-891A-0940 and the IPE becomes effective as described in WAC 388-891A-0945.

NEW SECTION

WAC 388-891A-0916 How long does it take to develop an IPE? (1) You develop your IPE within ninety days after the date you are determined eligible for VR services, or when DVR is operating under an order of selection within ninety days after the date DVR releases your case from a waiting list for services.

(2) You and your DVR counselor may agree to extend the IPE development time frame to a specific date by which your IPE will be complete.

NEW SECTION

WAC 388-891A-0920 What information does DVR provide to help me develop my IPE? DVR provides the following information to help you develop an IPE:

- (1) Information about who may help you with developing an IPE;
- (2) Results of assessment activities or other evaluations relevant to developing your IPE;
- (3) Information that must be included in the IPE;
- (4) Financial conditions or restrictions that apply to an IPE;
- (5) Information about how to get help completing forms required by DVR;
- (6) Information about your rights if you disagree with a decision a DVR counselor makes relating to the IPE;
- (7) Information about the client assistance program (CAP) and how to contact the program; and
- (8) Other information you request.

NEW SECTION

WAC 388-891A-0925 Who develops an IPE? (1) When DVR is operating under an order of selection each eligible individual whose case DVR has released from the waiting list for services or their representative may develop an IPE.

(2) When DVR is not operating under an order of selection each eligible individual or their representative may develop an IPE.

NEW SECTION

WAC 388-891A-0930 Who may help me with developing an IPE? You may develop an IPE on your own or with help from others. If you choose to develop your IPE with help from others, the following conditions apply:

- (1) You may develop an IPE with support and assistance from one or more of the following:
 - (a) A VR counselor employed by DVR;
 - (b) A VR counselor not employed by DVR, but who meets the minimum qualifications for a VR counselor established by DVR;

(c) Another person you choose, such as a representative, family member, advocate, or other individual;

(d) A disability advocacy organization.

(2) If you choose to develop the IPE with someone other than a DVR counselor, DVR may help you identify individuals that may help you develop your IPE, to the extent resources are available.

(3) DVR does not pay for any related costs or fees charged by other parties to develop an IPE.

(4) The IPE must include signatures that demonstrate that you agree to adhere to the terms, conditions, and other criteria, and your DVR counselor approves the IPE and makes it effective.

NEW SECTION

WAC 388-891A-0940 What must be included on the individualized plan for employment? An IPE must include:

(1) An employment outcome that is consistent with the definition of an employment outcome in WAC 388-891A-0010(4), except that in the case of an eligible individual who is a student or youth with a disability, the employment outcome may be a description of the individual's projected post-school employment outcome;

(2) The VR services you need to achieve the employment outcome;

(3) Timelines for each service on your IPE and for achieving the employment outcome;

(4) The name of the person or organization selected to provide each service included on the IPE and how you will obtain the services;

(5) Criteria you will use to evaluate whether you are making the progress agreed upon by you and the DVR counselor toward achieving the employment outcome;

(6) Terms and conditions, including:

(a) A description of what DVR has agreed to do to support your IPE; and

(b) A description of what you have agreed to do to reach your employment outcome, including:

(i) Steps you will take to achieve your desired employment outcome;

(ii) If applicable, services you agree to help pay for and how much you agree to pay; and

(iii) Services you agree to apply for and use that are available to you at no cost from another program;

(7) If you receive assistance from an employment network under the ticket to work and self-sufficiency program established under section 1148 of the Social Security Act (42 U.S.C. 1320b-19), a description of how responsibility for service delivery will be divided between the employment network and DVR;

(8) If you receive Social Security disability insurance (SSDI), supplementary security income (SSI), or both, and you have not received benefits planning services prior to developing your IPE, your DVR counselor may include benefits planning services in your IPE at the following times:

(a) Before job search activities begin; and

(b) Before you accept a job offer;

(9) Expected need for post-employment services and service providers necessary to maintain or regain employment

prior to closing the case service record and, if appropriate, a statement of how post-employment services are arranged using comparable services and benefits;

(10) An IPE that includes a supported employment outcome must also document:

(a) Time-limited support services to be provided;

(b) Extended services or natural supports that are likely to be needed;

(c) Who will provide and pay for natural supports or extended services or if you and DVR cannot identify who will provide and pay for extended services or natural supports at the time the IPE is developed, the IPE must include a statement explaining the basis for determining that a resource is likely to become available;

(d) A goal for the number of hours per week you are going to work and a plan to monitor your progress toward meeting the goal;

(e) A description of how the services on your IPE are coordinated with other federal or state services you get under an individualized plan;

(f) That any job skills training will be provided on-site;

(g) A supported employment outcome in an integrated setting for the maximum number of hours possible based on your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(11) An IPE for a student with a disability, as defined in WAC 388-891A-0010(16) must also document:

(a) The pre-employment transition services necessary for achieving the individual's employment outcome or projected post-school employment outcome;

(b) The specific transition services and supports needed to achieve the individual's employment outcome or projected post-school employment outcome; and

(c) Coordination, to the extent possible, with an individualized education program, to achieve the goals and objectives and provide the services identified; and

(12) An IPE for a self-employment outcome must also document:

(a) Any approved start-up costs;

(b) Any identified self-employment consultant services;

(c) Specific timeframes for monitoring progress;

(d) The monthly financial reporting requirements such as income and expenses statements;

(e) The agreed upon steps that will be taken if satisfactory progress is not made including the conditions that would result in discontinuing DVR support;

(f) How you and the DVR counselor will handle unforeseen expenses that arise after the IPE is signed; and

(g) The closure criteria, including the agreed upon income level that is consistent with the projections outlined in the business plan.

NEW SECTION

WAC 388-891A-0945 When does the IPE become effective? (1) Both an initial IPE and an amended IPE become effective when you and your DVR counselor have signed the IPE form.

(2) Your signatures indicate that you agree to the terms and conditions of the IPE and your DVR counselor approves the IPE content.

(3) DVR gives you a copy of the signed IPE in writing or provides it in an alternate format if needed.

NEW SECTION

WAC 388-891A-0950 Is the IPE reviewed and updated? You and a DVR counselor review the IPE at least once a year, or more often, to assess your progress in achieving an employment outcome and to determine if an amendment is necessary under WAC 388-891A-0951.

NEW SECTION

WAC 388-891A-0951 When would my IPE require an amendment? You and your DVR counselor will amend your IPE if there are substantial changes in:

- (1) Your desired employment outcome, even if the services on your IPE are substantially unchanged;
- (2) The VR services required to address your disability-related barriers; or
- (3) The service providers for IPE services.

NEW SECTION

WAC 388-891A-0960 Will DVR support an employment outcome that involves activities that are illegal under federal, state, or local law? DVR is prohibited from supporting employment outcomes that involve or promote activities that are illegal under federal, state, or local law.

NEW SECTION

WAC 388-891A-0965 Does DVR support any job I choose? (1) DVR provides services to support you in achieving an employment outcome as defined in WAC 388-891A-0010(4).

(2) The employment outcome you choose must be consistent with the information and results of the assessment of your VR needs described in WAC 388-891A-0900.

(3) There are some jobs that DVR will not support as employment outcomes in an individualized plan for employment, even when the conditions in subsections (1) and (2) of this section have been met. These include, but are not limited to, jobs that are not permitted under WAC 388-891A-0960.

(4) If you choose a job that compensates you at a non-competitive wage or in a nonintegrated setting, the following conditions apply:

(a) DVR may provide you with information and referrals to other programs and services in your community;

(b) DVR may not provide any services beyond information and referrals to support you in such a job other than as described in WAC 388-891A-1000.

NEW SECTION

WAC 388-891A-0966 What if the employment outcome I choose is religious in nature? Article 1, section 11 of the Washington state Constitution prohibits DVR from sup-

porting education or training for an employment outcome that is religious in nature.

NEW SECTION

WAC 388-891A-0970 What happens if I am not making the agreed upon progress in my IPE? (1) If you are not making the progress you agreed upon in your IPE, you and your DVR counselor determine the reason for the lack of progress and take the appropriate steps to address the issues or problems that are keeping you from making progress.

(2) If your actions or nonactions make it impossible to begin or continue VR services, your DVR counselor may close your case in accordance with WAC 388-891A-1300.

SUPPORTED EMPLOYMENT

NEW SECTION

WAC 388-891A-1000 What is supported employment? Supported employment exists to support individuals with the most significant disabilities who need intensive services and supports to achieve an employment outcome. Employment outcomes in supported employment are:

(1) Competitive integrated employment, including customized employment, as described in WAC 388-891A-0010(2); or

(2) Employment that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice in an integrated setting while you work on a short-term basis toward a competitive wage.

NEW SECTION

WAC 388-891A-1010 Who is eligible for supported employment? You are eligible for supported employment services if:

(1) You are eligible for vocational rehabilitation services under WAC 388-891A-0500;

(2) You have been determined to be an individual with a most significant disability;

(3) You have not historically worked in competitive integrated employment or your experience in competitive integrated employment has been interrupted or off and on due to the severity of your disability; and

(4) Based on a comprehensive assessment of your needs, including an evaluation of your rehabilitation, career, and job needs, you require intensive time-limited support services from DVR and extended services (long-term supports) to achieve an employment outcome.

NEW SECTION

WAC 388-891A-1015 Who determines whether I am eligible for supported employment? DVR determines whether you are eligible for supported employment services.

NEW SECTION

WAC 388-891A-1030 When is a work setting integrated in supported employment? (1) An integrated work setting in supported employment is a setting commonly found in the community, in which you interact with people without disabilities to the same extent that a person without disabilities in the same type of job interacts with other people.

(2) Interactions at your worksite between you and a supported employment service provider without disabilities do not meet the requirement for an integrated setting.

(3) Your work setting may only be considered integrated if your work unit, which refers to either the group of employees at your job who work together to accomplish tasks or to all employees with the same job category in an organization, includes individuals without disabilities to the same extent as found in the work unit of a person without disabilities performing the same job.

NEW SECTION

WAC 388-891A-1040 What are supported employment services? (1) Supported employment services are:

(a) Time-limited support services as described in WAC 388-891A-1045, including customized employment services as described in WAC 388-891A-0731; and

(b) Vocational rehabilitation services listed in WAC 388-891A-0700.

(2) Supported employment services may be provided to you:

(a) As part of your individualized plan for employment;

(b) To support and maintain you in supported employment; and

(c) For a period of time not to exceed twenty-four months following job placement, unless under special circumstances, you and the DVR counselor agree to extend the time frame for providing these time-limited services in order to achieve the employment outcome in your individualized plan for employment.

NEW SECTION

WAC 388-891A-1045 What are time-limited support services? Time-limited support services are a type of supported employment service to help you get and keep a job. Time-limited support services include:

(1) An assessment of your employment situation at least twice a month at your worksite, or, under special circumstances and at your request, an assessment regarding your employment situation that takes place away from your worksite at least twice a month to:

(a) Determine what is needed to maintain job stability; and

(b) Coordinate services or provide specific intensive services that are needed at or away from your worksite to help you maintain job stability.

(2) Intensive job skill training for you at your job site by skilled job trainers;

(3) Job development, job placement, and job retention services;

(4) Social skills training;

(5) Regular observation or supervision;

(6) Follow-up services such as regular contact with your employer, you, your representatives, and other appropriate individuals to help strengthen and stabilize the job placement;

(7) Facilitation of natural supports at the worksite;

(8) Other services similar to services described in subsection (1) through (7) of this section; and

(9) Any other vocational rehabilitation service.

NEW SECTION

WAC 388-891A-1050 What are extended services?

Extended services are ongoing support services and other services based on your need to help support or maintain your work in supported employment after you have made the transition from DVR time-limited support services. Extended services may be available to you if you have a most significant disability and you are in supported employment.

NEW SECTION

WAC 388-891A-1060 Who provides the extended services I need? (1) Extended services are provided by non-profit private organizations such as community rehabilitation programs, state and local public agencies, employers, or any other appropriate resources.

(2) DVR may provide you with extended services on a case-by-case basis for up to four years from the date time-limited support services have ended or until you reach age twenty-five, under the following conditions:

(a) You are a youth with a disability as defined in WAC 388-891A-0010(19);

(b) You and your DVR counselor have discussed whether continuing time-limited supported employment services would be appropriate and you both have determined that no further time-limited supported employment services are necessary to support and maintain your supported employment before you transition to extended services; and

(c) No other source of extended services is available for your use.

(3) DVR must not provide extended services for anyone who does not meet the criteria in subsection (2) of this section.

NEW SECTION

WAC 388-891A-1065 What are natural supports?

Natural supports are the people you ordinarily come into contact with at work or at home to help you with work routines and social interactions at the worksite. Natural supports can help you keep your job after DVR stops providing supported employment services.

NEW SECTION

WAC 388-891A-1075 What is required for me to change from time-limited support services to extended services? Prior to helping you change from time-limited ser-

vices to extended services, a DVR counselor must ensure the following:

- (1) You have made substantial progress toward meeting the number of work hours per week you want to work as documented on your individualized plan for employment;
- (2) You and your DVR counselor agree that the job is satisfactory; and
- (3) Your DVR counselor has obtained verification that:
 - (a) Your job performance is stable and satisfactory to your employer;
 - (b) You have stabilized in the job; and
 - (c) You no longer need time-limited support services.
- (4) Extended services are readily available and may be provided to you without an interruption in services.

NEW SECTION

WAC 388-891A-1080 Under what conditions does DVR close my case service record for supported employment? (1) If a DVR counselor determines that you require supported employment and has explored all available options for securing resources for extended services or natural supports and there is no reasonable expectation these services will become available, DVR must close your case service record.

(2) If you have stabilized in your supported employment outcome, DVR must wait at least ninety days after helping you change from supported employment services to extended services or natural supports before closing your case service record as having achieved an employment outcome in supported employment.

NEW SECTION

WAC 388-891A-1090 Under what conditions does DVR provide time-limited support services as post-employment services? DVR provides time-limited support services to you as post-employment services, as described in WAC 388-891A-0890, following the change from supported employment services to extended services if:

- (1) Your extended service provider cannot provide the services; and
- (2) You need specific services to keep, advance in, or regain your job.

PAYING FOR VR SERVICES

NEW SECTION

WAC 388-891A-1100 When does DVR provide or pay for vocational rehabilitation services to individuals? Except for those services described in WAC 388-891A-1110, DVR provides and pays for VR services when services are not available to you from, or paid for by, any other program administering or providing comparable services or benefits, as described in WAC 388-891A-0010(1), and:

- (1) You have completed the application requirements;
- (2) You have provided documents that verify your identity and legal work status;
- (3) DVR authorizes the services before the services begin; and

(4) You have completed the financial statement, if required, and have agreed upon what portion, if any, you are required to contribute for your VR services, and:

- (a) You need the services so that a DVR counselor can determine your eligibility for services; or
- (b) You need the services to assist you and your DVR counselor as you:
 - (i) Identify your vocational rehabilitation needs; or
 - (ii) Prepare for, secure, maintain, advance in, or regain employment.

NEW SECTION

WAC 388-891A-1101 Are there limits or activities that DVR does not pay for or support? DVR will not pay for or support any of the following:

- (1) Court fees, attorney fees, fines, or penalties related to illegal acts that result from any civil or criminal legal proceedings or related matters;
- (2) The provision of usual living expenses as a maintenance service or services as described in WAC 388-891A-0735;
- (3) Insurance as outlined in WAC 388-891A-1180;
- (4) Bonds, including surety or fidelity bonds, that result in liability for DVR;
- (5) Construction of or permanent modifications to real property as prohibited by 34 C.F.R. Sec. 76.533;
- (6) Education or training for an employment outcome that is religious in nature, as specified in the Washington state Constitution and outlined in WAC 388-891A-0966;
- (7) Co-signing of loans;
- (8) The costs as listed in WAC 388-891A-1186 for an IPE with self-employment.

NEW SECTION

WAC 388-891A-1102 Am I required to repay DVR funds that were overpaid to me? (1) If you receive DVR funds as an overpayment, you must repay the amount you were overpaid to DVR.

(2) An overpayment occurs when DVR issues a payment directly to you to purchase an approved VR service, you signed a direct pay agreement outlining your responsibilities when receiving a direct payment from DVR, and either:

- (a) The approved service costs less than the amount advanced to you for payment; or
- (b) You do not provide itemized receipts or other itemized documentation of your purchase and its cost within twenty calendar days of the date of purchase.

(3) DVR will notify you in writing within 90 days of the date of the overpayment requesting that you repay any amount overpaid.

(4) DVR will refer the matter to the DSHS office of financial recovery (OFR) if:

- (a) You do not repay the funds within the time allowed in DVR's written notice; and
- (b) DVR has notified you in writing of the overpayment requirement in a timely manner.

(5) If you cannot afford to repay the overpayment, you may request that DVR notify OFR of your financial circum-

stances and ask that the repayment requirement be waived based on your financial circumstances.

NEW SECTION

WAC 388-891A-1103 When must DVR make a referral to the DSHS office of fraud and accountability (OFA)?

(1) When a DVR staff person suspects that a customer may have intentionally or knowingly misrepresented, concealed, or withheld facts in order to receive DVR funds, services, or equipment, DVR must make a referral to the DSHS office of fraud and accountability (OFA).

(2) Customer fraud has occurred when the customer:

(a) Has knowingly and intentionally not reported or under-reported income or resources that otherwise may affect the provision of VR services;

(b) Does not report assets (such as vehicles, boats, motor homes, etc.) on the financial statement, when required;

(c) Knowingly and intentionally misused DVR funds; or

(d) Is receiving DVR services under a false identity or by providing false information as a basis for their eligibility for VR services.

(3) DVR would not typically refer a customer with a significant mental health diagnosis, intellectual delay, or a significant learning disability that may have interfered with their decision making to the OFA for investigation.

NEW SECTION

WAC 388-891A-1105 Does DVR require written authorization to purchase services? (1) DVR must make a written authorization prior to purchasing services, unless exceptional circumstances require an oral authorization.

(2) DVR must issue a written authorization for purchase within five business days of an oral authorization.

NEW SECTION

WAC 388-891A-1110 May DVR pay for VR services without determining whether comparable services and benefits are available from another program or organization? DVR may provide and pay for the following services without determining whether a comparable service or benefit, as defined in WAC 388-891A-0010(1), is available to you from, or paid for by, any other program administering or providing services or benefits:

(1) Assessment services to determine your eligibility, VR needs, or both;

(2) Counseling and guidance, including information and support services to assist you in exercising informed choice;

(3) Referral and other services to secure services you need from other agencies;

(4) The job-related services described in WAC 388-891A-0725 through 388-891A-0732;

(5) Rehabilitation technology services;

(6) Post-employment services when providing the services listed in subsection (1) through (5) of this section.

NEW SECTION

WAC 388-891A-1120 May DVR authorize or provide VR services before determining whether a comparable service or benefit is available to me to avoid delaying or interrupting my services? (1) To avoid delaying or interrupting needed services, a DVR counselor may authorize or provide VR services before determining whether a comparable service or benefit, as defined in WAC 388-891A-0010(1), is available to you from, or paid for by, any other program administering or providing services or benefits, when:

(a) You are at extreme medical risk based on medical evidence provided by a qualified professional and require VR services;

(b) You will obtain an immediate job placement; or

(c) Your progress toward achieving the employment outcome identified on your individual plan for employment will be delayed or interrupted without VR services.

(2) If you receive VR services before services or benefits are available from another program, you must begin using the services and benefits from the other program when they become available to you.

NEW SECTION

WAC 388-891A-1125 If comparable services and benefits are available from another program or organization, and I do not want to use them, who is responsible for the cost of the services? (1) If you choose not to apply for and use comparable services and benefits that are available to you, as defined in WAC 388-891A-0010(1), you are responsible for the cost of the services.

(2) Except for the services and circumstances outlined in WAC 388-891A-1110 and 388-891A-1120, DVR does not pay for services or benefits that can be provided to you or paid for by any other program.

NEW SECTION

WAC 388-891A-1130 Do I have to pay a portion of my VR services if I receive assistance or income support from another public program? You are not required to pay any portion of your VR services if you or your DVR counselor provide verification that you currently receive benefits from one of the following programs:

(1) A department of social and health services (DSHS) cash or food assistance program;

(2) Medicaid; or

(3) Supplemental security income (SSI) or social security disability insurance (SSDI).

NEW SECTION

WAC 388-891A-1135 Does DVR require that I pay for part of my VR services using my own financial resources? When the conditions outlined in WAC 388-891A-1130 do not apply to you and the information you provide for the financial statement shows that financial resources are available, DVR requires you to pay a portion of the cost of your VR services other than those outlined in WAC 388-891A-1145.

NEW SECTION

WAC 388-891A-1136 When does DVR require that I pay for part of my VR services using my own financial resources? If your annual or monthly income is a percentage of the federal poverty level that is higher than would qualify for children's medicaid in Washington state, as described in WAC 182-505-0100 (6)(b), DVR will require you to provide a complete financial statement that documents your financial status and calculates the amount available for you to pay for your VR services.

NEW SECTION

WAC 388-891A-1137 How does DVR determine whether I must pay for VR services? (1) DVR collects financial information from you to determine whether you must pay any part of the cost of VR services if neither you nor your DVR counselor can verify that you receive assistance or income support from any of the programs identified in WAC 388-891A-1130.

(2) You must complete and sign a DVR financial statement to document your financial status as follows:

(a) If you reported your income tax status as married filing jointly, married filing separately, or another person identified you as a registered domestic partner or dependent, complete the financial statement based on family resources.

(b) If you reported your income tax status as single and were not claimed as a dependent by another person, complete the financial statement based on your own financial resources.

(c) DVR requires you to provide copies of financial records (such as bank statements, tax returns, or documentation of SSI or SSDI benefits received) to establish your financial status. If you do not have copies of documentation to verify your receipt of benefits from public assistance programs, DVR may be able to assist you in obtaining that documentation at your request.

(3) The DVR financial statement requires you to disclose information from the following sources:

(a) Previous year's income tax return, if you filed taxes for the most recent tax year or you were claimed as a dependent on a family member's tax return;

(b) Previous month's bank statements reflecting all income received;

(c) If your previous year's income meets the conditions described in WAC 388-891A-1136, the financial statement requires the following information about your finances:

(i) Monthly income from all sources, including investments and trusts;

(ii) Real and personal assets, including but not limited to bank accounts; and

(iii) Monthly expenses, including housing, food, child care, transportation, health care, other necessities, credit or loan payments, disability-related expenses, and any other financial obligations.

(4) If the results of your financial statement show that you do not have resources available to help pay for your VR services, DVR provides the services at no cost to you.

(5) If your financial status changes, you must report these changes to your DVR counselor.

(6) If you decline to complete the financial statement or decline to contribute to the cost of VR services, DVR will provide only those services listed under WAC 388-891A-1145.

NEW SECTION

WAC 388-891A-1140 How does DVR determine how much I pay for VR services? When the financial statement indicates that you have financial resources to contribute, you and the DVR counselor will agree on how your resources will help pay for VR services. You and the DVR counselor will document the agreed upon contribution to the costs of services on the IPE.

NEW SECTION

WAC 388-891A-1145 Which VR program services am I not required to help pay for? You are not required to pay any portion of the following VR services, regardless of your financial status:

(1) Pre-employment transition services;

(2) Assessment services to determine eligibility, priority category, or VR needs;

(3) Any VR services as described in WAC 388-891A-0700 when provided directly by DVR staff;

(4) Information and referral services;

(5) Auxiliary aids, including interpreter and reader services needed to participate in VR services;

(6) Personal assistance services needed to participate in VR services;

(7) Job related services as described in WAC 388-891A-0725 through 388-891A-0732; and

(8) Post-employment services that include any of the services in subsections (1) through (7) of this section.

NEW SECTION

WAC 388-891A-1150 May I select the services and service provider of my choice? (1) You may select VR services that you need to achieve an employment outcome that is consistent with your unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) You may select the service provider of your choice if the service provider meets the following conditions:

(a) DVR pays for services that meet your needs at the least cost to meet your needs as follows:

(i) If two or more providers of goods and services are adequate and available to meet your needs but differ in cost and you choose the higher cost provider, you are financially responsible for the difference in cost; and

(ii) DVR may pay for goods and services at a higher cost if the costs are reasonably similar;

(b) The service provider has operating capacity to serve you; and

(c) The service provider meets all federal, state, and DVR requirements.

NEW SECTION

WAC 388-891A-1155 When does DVR pay for occupational or vocational training? DVR pays for occupational or vocational training if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) You require training services to achieve the employment outcome identified on your IPE;

(2) If the training agency or provider is eligible for federal financial aid, you and your DVR counselor have made maximum efforts to get and use available need-based gift aid, including Pell or state need grants, from other sources to pay for costs related to attendance; and

(3) The training agency or provider that you have chosen is licensed by the workforce training education coordinating board (WTECB) in the state of Washington as follows:

(a) The DVR counselor confirms the licensure status of an occupational or vocational training agency by verifying that status with the WTECB list of private career schools; and

(b) If you require training from an agency or provider that is not included on the WTECB list of private career schools, you may request an exception to subsection (3)(a) of this section as described in WAC 388-891A-0205.

NEW SECTION

WAC 388-891A-1156 When does DVR pay for basic education or literacy training? DVR pays for basic education or literacy training if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) You require training services to achieve the employment outcome identified on your IPE;

(2) You have taken the entry test, if required by the school you have chosen, to assess your skills and develop an instructional plan as appropriate; and

(3) DVR does not require you to complete an application for financial aid to participate in basic education or literacy training.

NEW SECTION

WAC 388-891A-1160 When does DVR pay for training services at an institution of higher education? DVR pays for training services at an institution of higher education if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) You require training services to achieve your desired employment outcome as identified on your IPE;

(2) You and your DVR counselor have made maximum efforts to get and use available need-based gift aid, including Pell or state need grants, from other sources to pay for costs related to attendance;

(3) You provide the DVR counselor a copy of your student financial aid award or denial form, statement of unmet need and student budget, and other related documentation;

(4) You achieve the academic standards described in WAC 388-891A-1164; and

(5) You utilize all gift aid awarded to you toward the cost of attendance.

NEW SECTION

WAC 388-891A-1161 Are there forms of financial assistance that I am required to apply for or access before DVR will assist with the cost of attendance at my institution of higher education? (1) Before DVR may assist with the cost of attendance at an institution of higher education, DVR requires you to:

(a) Complete a free application for federal student aid (FAFSA); and

(b) Use all available need-based gift aid toward your cost of attendance.

(2) DVR does not require you to:

(a) Apply for academic awards and scholarships based on merit as comparable benefits; or

(b) Accept any available student loans.

NEW SECTION

WAC 388-891A-1162 When does DVR pay for training at a private school or an out-of-state institution of higher education? If you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and choose training services at a private or out-of-state program when an in-state or public program is available and adequate to meet your needs:

(1) DVR pays for training services up to the amount of the in-state or public program; and

(2) You are responsible for costs that are in excess of the public or in-state program costs.

NEW SECTION

WAC 388-891A-1163 May DVR pay for other fees charged by my institution of higher education when those fees are required as a condition of registration? (1) If an academic institution charges a fee to cover the cost of a student health clinic and the fee is required as a condition of registration, DVR pays this fee when financial aid funds are not adequate.

(2) If an academic institution charges a liability fee to cover the costs of a student to register in high-risk courses, practicums, internships, or externships and the fee is required as a condition of registration, DVR pays this fee.

(3) DVR must not pay for health insurance, as outlined in WAC 388-891A-1180.

NEW SECTION

WAC 388-891A-1164 What academic standards does DVR have for education? (1) DVR considers you to have met its minimum academic standards when you have achieved the greater of either:

(a) The minimum progress necessary to maintain good standing in your academic program and to graduate from your course of study; or

(b) The cumulative grade point average that you and your DVR counselor have agreed upon in your IPE, when appropriate.

(2) If your progress is delayed due to a disability-related issue, DVR will take the issue into consideration in evaluating satisfactory progress toward the completion of your academic program.

NEW SECTION

WAC 388-891A-1165 When does DVR make a direct payment to me? DVR makes a direct payment to you if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) You sign a DVR direct payment agreement to acknowledge that you understand and accept the terms of the agreement;

(2) You only use direct payment funds to purchase VR services that you and your DVR counselor have agreed upon and that have been approved in advance;

(3) You give your DVR counselor the itemized receipts or other itemized documentation of your purchase and its cost for all purchases within twenty calendar days of the purchase;

(4) If you receive a direct payment in advance that is greater than the actual cost of the purchase, you must repay the difference between the cost of your purchase and the amount provided to you by DVR; and

(5) If you do not provide itemized receipts or other itemized documentation of your purchase and its cost, you must repay any funds directly paid to you as a maintenance service, as described in WAC 388-891A-1102.

NEW SECTION

WAC 388-891A-1170 When does DVR pay for my moving expenses? DVR pays to move your household goods so that you can participate in training services identified in your IPE, other approved VR services, or accept an offer of employment if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) The training or other VR service you need to achieve an employment outcome is not within commuting distance or a DVR counselor verifies that you have been offered a job that is:

(a) Contingent upon your relocation;

(b) Specialized in nature that narrows the availability of employment to the degree that relocation is required; or

(c) At a distance from your current residence that is not practical for commuting;

(2) A DVR counselor determines that the relocation is the most appropriate step toward reaching your desired employment outcome; and

(3) A DVR supervisor approves payment for the moving expenses to support your relocation, and if you choose to insure the relocation or moving of your household goods, you are responsible for the cost of your insurance.

NEW SECTION

WAC 388-891A-1171 When DVR pays for relocation or moving expenses, may I move my own household belongings in a rental vehicle? DVR only pays for moving services provided by a moving company that is licensed, insured, and bonded. DVR does not pay for a rental vehicle for the purpose of moving your own household belongings.

NEW SECTION

WAC 388-891A-1172 When does DVR provide services to facilitate driving a personal vehicle? (1) DVR provides services to facilitate driving a personal vehicle, as described in WAC 388-891A-0866, when the use of a personal vehicle is necessary for participation in VR services or to secure, maintain, advance in, or regain employment.

(2) DVR will not provide services to facilitate you or another driver driving a personal vehicle if:

(a) Either you or the driver is uninsured; or

(b) The DVR counselor has obtained information and documented any fact that raises a question regarding driving safety.

NEW SECTION

WAC 388-891A-1173 When may DVR pay for the cost of fueling a personal vehicle as a transportation service? DVR pays for the cost of fueling a personal vehicle as a transportation service if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100, the conditions for DVR to pay for services that facilitate driving a personal vehicle in WAC 388-891A-1172, and the following additional conditions:

(1) When public transportation is not available or does not meet your needs (including your disability and accessibility needs):

(a) You provide DVR with documentation that shows:

(i) The vehicle is currently licensed and insured; and

(ii) Proof you or the driver of the personal vehicle has a valid driver's license;

(b) You provide documentation of point-to-point mileage using an online map service; and

(c) DVR staff calculates the point-to-point fuel allowance by multiplying the number of miles by the Internal Revenue Service (IRS) standard medical mileage rate; or

(2) When public transportation is available that meets your transportation needs (including your disability and accessibility needs), but you choose to use a personal vehicle:

(a) You provide DVR with documentation that shows:

(i) The vehicle is currently licensed and insured; and

(ii) Proof you or the driver of the personal vehicle has a valid driver's license; and

(b) DVR authorizes a fuel allowance up to the amount of the least cost bus pass available to you that meets your transportation needs.

NEW SECTION

WAC 388-891A-1174 When does DVR purchase and loan a vehicle to you? (1) DVR only purchases and loans a

vehicle to you under exceptional circumstances and when providing a vehicle would be the least cost service to meet your transportation needs. In such exceptional circumstances, no other transportation options are available and it is not feasible for you to relocate or use other transportation options.

(2) You or the driver of your vehicle must participate in an assessment to determine that you, or if you are riding as the passenger in the vehicle, that the driver, can safely operate the vehicle. As part of that assessment, you, or if you are the passenger, the driver, must provide:

(a) A copy of a current, valid driver's license;

(b) A current copy of a driving record disclosing any moving violations and indicating no criminal convictions related to driving a vehicle;

(c) Documentation of your insurability and the anticipated expense of insuring the vehicle to meet DVR's minimum requirements, as outlined in WAC 388-891A-1178; and

(d) Documentation of your ability to maintain insurance coverage.

(3) If the assessment described in subsection (2) of this section reveals any fact that raises a question regarding driving safety, the DVR counselor must require a driving evaluation conducted by a state-certified driver training instructor, or another relevant evaluation, as appropriate.

(4) When the vehicle has been or will be modified for your use, the driving evaluation described in subsection (3) of this section must be conducted by a certified driver rehabilitation specialist.

(5) The DVR director must approve the purchase of the vehicle and the loan to you.

NEW SECTION

WAC 388-891A-1175 What conditions apply for DVR to purchase and loan a vehicle to me? In addition to meeting the circumstances described in WAC 388-891A-1174 and the conditions outlined in WAC 388-891A-1100 and 388-891A-1172, you must satisfy all of the following requirements for DVR to purchase and loan a vehicle to you:

(1) When you are the driver, the DVR counselor determines, based on disability-related documentation that your disability is stable or slowly progressive, and it is not likely to impair your ability to drive in the future.

(2) When the vehicle has been or will be modified for your use, you or the driver complete a driving evaluation with a certified driver rehabilitation specialist to verify driving ability and evaluate your rehabilitation needs.

(3) If you or the driver of your vehicle have a documented history of substance abuse in the past five years, you must provide or participate in a current substance use disorder assessment.

(4) At the time of vehicle purchase, DVR remains the legal owner and you are the registered owner.

(5) You must submit the following documents to DVR and agree to provide ongoing verification upon request of the DVR counselor:

(a) A copy of the current, valid driver's license for each driver;

(b) A current copy of the driving record for each driver that discloses any moving violations and indicates no criminal convictions related to driving a vehicle;

(c) A copy of motor vehicle insurance coverage with the following minimum coverage and conditions while DVR remains the legal owner of the vehicle:

(i) Liability in the amount of at least \$50,000/100,000/50,000;

(ii) Uninsured motorist in the amount of at least \$50,000/100,000/50,000;

(iii) Personal injury in the amount of at least \$100,000;

(iv) Replacement cost of the vehicle, including special equipment and vehicle modifications, if applicable;

(v) If your use of the vehicle is necessary for your specific job duties, including self-employment, sufficient insurance to cover any losses that occur while you are using a vehicle for your specific job duties;

(vi) A clause in your insurance policy provides written notification to DVR if the vehicle insurance lapses, is canceled, or the insured drivers have any driving infractions that raise safety questions;

(vii) DVR is listed as the lien holder on the policy; and

(viii) All drivers who use the vehicle are listed on the policy;

(d) A description of your IPE of how you will pay for vehicle insurance and what you will contribute toward maintenance and repair, as this is a requirement for subsequent ownership of the vehicle; and

(e) A signed agreement to return the vehicle to DVR upon request as long as DVR owns the vehicle.

NEW SECTION

WAC 388-891A-1176 When does DVR transfer ownership of a vehicle that DVR purchased and loaned to you? (1) DVR transfers ownership of a vehicle that DVR has purchased and loaned to you when you achieve an employment outcome, as described in WAC 388-891A-1310, and you maintain the employment for at least ninety days.

(2) Once you have maintained the employment for at least ninety days, and before DVR transfers ownership of a vehicle that DVR purchased and loaned to you, you must submit documentation to confirm:

(a) You are the registered owner of the vehicle;

(b) You have a current driver's license; and

(c) You have current insurance to cover the cost of replacement for loss or damage at the time DVR transfers ownership.

NEW SECTION

WAC 388-891A-1177 When may DVR pay for vehicle modifications as a rehabilitation technology service? DVR pays for vehicle modifications as a rehabilitation technology service if you meet the requirements for DVR to pay for a VR service as outlined in WAC 388-891A-1100, the conditions for DVR to pay for services that facilitate the driving of a personal vehicle in WAC 388-891A-1172, and the following additional conditions:

(1) The DVR counselor determines based on disability-related documentation that your disability is stable or slowly

progressive and not likely to impair your driving ability in the future if you plan to drive the vehicle;

(2) You provide copies of documentation verifying that you or the driver of your vehicle is the legal and registered owner of the vehicle, except when DVR is the legal owner of the vehicle being modified;

(3) DVR obtains documentation of an inspection from a certified or journey-level auto mechanic that verifies the vehicle is in good operating condition and a vendor certified through the National Mobility Equipment Dealers Association (NMEDA) says it is capable of being modified;

(4) If you or the driver of your vehicle has a documented history of substance abuse in the past five years, you or the driver provide or participate in a current substance use disorder assessment;

(5) If you will be a driver of the vehicle, you demonstrate an ability to operate a motor vehicle safely by completing a driving evaluation with a certified driver rehabilitation specialist that verifies your driving ability and evaluates your rehabilitation needs;

(6) The certified driver rehabilitation specialist prescribes needed modifications to the vehicle, except that prescriptions are not required for:

(a) Placement of a wheelchair lift, ramp or scooter lift and tie downs;

(b) Passenger access only; and

(c) Wheelchair carriers;

(7) Provide documentation of vehicle insurance adequate to cover the cost of replacement for loss or damage, including the cost of the modification; and

(8) Demonstrate or provide documentation that verifies you or the driver of your vehicle can safely operate the vehicle as modified.

NEW SECTION

WAC 388-891A-1179 When may DVR pay for vehicle repairs? In order for DVR to pay for a vehicle repair you must meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100, the conditions for DVR to pay for services that facilitate your driving in WAC 388-891A-1172, and the following additional conditions:

(1) Your transportation needs are such that the least cost option that is adequate to meet your needs requires the repair of the vehicle.

(2) You must provide DVR with documentation that shows you are the registered owner of the vehicle, with current vehicle insurance, and a valid driver's license. You and your DVR counselor may request an exception to this requirement under WAC 388-891A-0205 if:

(a) You ride as a passenger in a vehicle owned by a family member, as described in WAC 388-891A-0010(7), and the family member who owns and drives the vehicle has current vehicle insurance and a valid driver's license; or

(b) You are the driver of a vehicle owned by a family member, as described in WAC 388-891A-0010(7), and the following additional conditions:

(i) You and the owner of the vehicle are named on the vehicle insurance policy;

(ii) You have a valid driver's license; and

(ii) You provide DVR with written consent for the repair from the owner.

(3) The DVR counselor must not authorize repairs if:

(a) The counselor has obtained information and documented that the vehicle is unsafe or beyond repair; or

(b) A vehicle repair business without automotive service excellence (ASE) certification or other certified mechanics performs the repairs.

NEW SECTION

WAC 388-891A-1180 What types of insurance does DVR pay for? (1) If you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100, DVR pays to insure assistive technology devices, equipment, and products.

(2) DVR must not pay for any other types of insurance. Prohibited types of insurance include, but are not limited to, health, vehicle, home, and life insurance.

(3) DVR must not pay for bonds or guarantees that result in liability for DVR.

NEW SECTION

WAC 388-891A-1181 What types of assistive technology insurance may DVR pay for? DVR pays for insurance for assistive technology devices, equipment, and products to cover the cost of repairs or replacement if they are lost or damaged, if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and the following additional conditions:

(1) The individual with a disability is the holder of the device, equipment, or product;

(2) The individual with a disability is the named insured under the policy; and

(3) A third-party insurer pays for replacement or repair directly to the manufacturer or service provider.

NEW SECTION

WAC 388-891A-1182 What types of assistive technology warranties may DVR pay for? (1) At the time of purchase, DVR pays for an initial warranty for an assistive technology device, piece of equipment, or product if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100, and the warranty:

(a) Is available from the manufacturer or service provider at the time of purchase;

(b) Offers a guarantee for a specified period of time following the date of purchase; and

(c) Guarantees repair or replacement of parts, or if necessary, the entire device, equipment, or product when the parts or workmanship are faulty.

(2) DVR pays for a warranty that extends beyond the period of coverage of an initial warranty for an assistive technology device, piece of equipment, or product if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and:

(a) The individual with a disability is the holder of the device, equipment, or product;

(b) The manufacturer or service provider provides a written guarantee for the materials and workmanship of the device, equipment, or product;

(c) The manufacturer or service provider replaces or repairs faulty parts and workmanship, replaces the device, equipment, or product in whole; and

(d) If the manufacturer or service provider does not directly perform repairs or replacement, the manufacturer or service provider must directly pay a third-party service provider to repair or replace parts and workmanship, or to repair or replace the device, equipment, or product in whole.

NEW SECTION

WAC 388-891A-1185 What are the costs that DVR may pay to support my IPE with an employment outcome in self-employment? DVR only pays for self-employment services that are required for you to achieve an employment outcome when you meet the conditions outlined in WAC 388-891A-1100, and:

(1) Start-up costs for your self-employment must only include those costs related to operating the business;

(2) Start-up costs must be specified in your feasibility study or business plan, depending on the complexity of your small business; and

(3) Start-up costs that DVR may support may include, but are not limited to:

(a) Licenses;

(b) Stocks of goods for inventory, not to exceed the first sixty days;

(c) Marketing costs;

(d) Financial record-keeping systems, software, or services;

(e) Security deposits or utility hook-ups at the location of your self-employment; and

(f) Consultations with a self-employment business consultant who DVR approves.

NEW SECTION

WAC 388-891A-1186 What are the costs that DVR must not pay for to support an IPE with an employment outcome in self-employment? DVR must not pay for the following costs related to self-employment:

(1) Salaries, wages, or cash for you, your business partners, or your employees;

(2) Leases, purchase of real property, insurance, or bonds, including surety or fidelity bonds, that result in liability for DVR;

(3) Construction, including modification, improvement, replacement, demolition, or removal of permanent structures or buildings;

(4) Installation of any item, piece of equipment, or product system as a permanent fixture on real property;

(5) Services related to a self-employment outcome when the outcome would establish an entity that is religious in nature, as specified in Article 1, section 11, of the Washington state Constitution and including those services outlined in WAC 388-891A-0966;

(6) Refinancing an existing business or personal debt; and

(7) Costs related to bankruptcies.

NEW SECTION

WAC 388-891A-1190 When may DVR pay for child-care services? DVR only pays for child-care services if you meet the conditions for DVR to pay for a VR service as outlined in WAC 388-891A-1100 and you meet the following additional conditions:

(1) DVR only pays for child-care services to a child-care provider who is:

(a) Licensed or certified by the appropriate state agency responsible for the licensure of child-care providers; and

(b) A DVR vendor;

(2) DVR only pays for child-care services directly to the child-care provider; and

(3) DVR pays a child-care provider the provider's usual and customary fee.

NEW SECTION

WAC 388-891A-1194 When may DVR pay for non-permanent structural modifications at my worksite? If you meet the conditions outlined in WAC 388-891A-1100 and your employment is at risk, DVR pays for nonpermanent worksite modifications that an employer has refused to provide under the Americans with Disabilities Act (ADA) or section 504 of the Rehabilitation Act of 1973, as amended.

NEW SECTION

WAC 388-891A-1195 When may DVR pay for non-permanent modifications where I live or at my place of self-employment? DVR pays for nonpermanent modifications where you live or at the place of your self-employment if:

(1) You meet the conditions outlined in WAC 388-891A-1100;

(2) The DVR counselor determines that the modifications are the most effective solution for accessibility where you live or at your place of self-employment, or for the operation of your self-employment business;

(3) Nonpermanent modifications to the property contribute to participating in your individualized plan for employment to achieve an employment outcome or to maintain or advance in employment;

(4) You provide proof of current property ownership with up-to-date mortgage payments and property insurance, or if you are not the legal owner of the property, you and the DVR counselor determine whether the property owner is able and willing to pay for the modification(s) and:

(a) If the property owner is willing and able to pay for modification(s), DVR does not pay for them.

(b) If the property owner is not willing or able to pay for the modification(s), but agrees to the property modification, you provide DVR with the following from the property owner:

(i) Written consent for the modification(s);

(ii) Proof of current property insurance; and

(iii) If you are renting, a statement to verify that you have a lease or rental agreement and there is no reason to believe that it will be terminated prematurely; and

(5) All nonpermanent modifications must be completed by a licensed, insured, and bonded professional.

NEW SECTION

WAC 388-891A-1196 Are there purchases related to nonpermanent modification(s) of my home or place of self-employment that DVR does not pay for? DVR does not purchase land, pay to build a permanent structure, or pay for any construction that would result in a permanent modification to the real property of your home or place of self-employment.

LOANING EQUIPMENT

NEW SECTION

WAC 388-891A-1200 Under what conditions does DVR loan equipment, devices, or other items to me? (1) If you need a device, tool, piece of equipment, or other item to participate in VR services or to prepare for, secure, maintain, advance in, or regain employment, DVR will loan a new or used item to you until you achieve an employment outcome as described in WAC 388-891A-0010(4). Before purchasing new items, DVR will loan an item from the existing DVR resources if available at the time needed and DVR determines it is adequate to meet your needs.

(2) Before DVR loans an item to you, you must sign an agreement with DVR to comply with the following conditions:

(a) Immediately return the item upon request or pay for the item if you cannot return it to DVR; and

(b) Maintain the item according to DVR instructions and manufacturer's guidelines, if applicable, and keep it secure from damage, loss, or theft.

NEW SECTION

WAC 388-891A-1205 Are there instances in which DVR would issue equipment, devices, or other items directly to me without a loan agreement? (1) When necessary for participation in VR services or directly related to an employment outcome, DVR may issue certain equipment, devices, or other items directly to you without a loan agreement.

(2) Items issued without a loan agreement are those that cannot, for practical, legal, or hygienic reasons, be reissued to another customer.

(3) If the DVR counselor determines an item could not be used by another individual if it were returned to DVR, the DVR counselor may issue the item directly to you without a loan agreement and the item is owned by you at the time of issue.

NEW SECTION

WAC 388-891A-1210 Does DVR provide items that require customization for my own personal needs? (1) When you and your DVR counselor agree that you will require customized equipment, devices, or other items to address your disability-related personal needs, your DVR counselor will determine whether it is appropriate to loan those items to you or whether it is appropriate to issue those items directly to you.

(2) If another individual is unlikely to be able to reuse the item because of its disability-related customization, your DVR counselor will issue that equipment, device, or other item directly to you rather than requiring a loan agreement.

NEW SECTION

WAC 388-891A-1230 What happens if I fail to return a device, tool, piece of equipment, or other item if requested by DVR? If DVR directs you to return an item loaned to you and you do not immediately return it, DVR will report the loss to the DSHS office of financial recovery (OFR). The OFR will attempt to recover the item or payment for the item from you. If the OFR cannot recover the item or payment for the item from you, the OFR may report the loss to the local county prosecutor for legal action.

NEW SECTION

WAC 388-891A-1240 What happens to a device, tool, piece of equipment, or other item that has been loaned to me by DVR if I will still need it after my case service record is closed? (1) If you have achieved the employment outcome on your IPE and the DVR counselor agrees you will continue to need the device, tool, piece of equipment, or other item to keep your job, DVR may transfer ownership to you at the time a DVR counselor closes your case service record.

(2) If you have not achieved an employment outcome at the time a DVR counselor closes your case service record and requests the return of the loaned equipment, you may request an exception to WAC 388-891A-1200 as outlined in WAC 388-891A-0205 to retain the device, tool, piece of equipment, or other item that DVR loaned to you.

CASE CLOSURE

NEW SECTION

WAC 388-891A-1300 Why does DVR close a case service record? A DVR counselor will close your case service record for any one or more of the following reasons:

(1) You achieve an employment outcome as described in WAC 388-891A-1310;

(2) DVR determines that you do not meet the eligibility criteria described in WAC 388-891A-0500 and you are not eligible or no longer eligible because:

(a) You accepted extended employment as defined in WAC 388-891A-0010(5);

(b) You are not capable of benefiting in terms of an employment outcome based on clear and convincing evi-

dence found through trial work experiences, as described in WAC 388-891A-0527;

(c) You are not capable of benefiting in terms of an employment outcome because DVR cannot verify that you are legally authorized to work, as described in WAC 388-891A-0507;

(3) You are no longer available to participate in services, for reasons including, but not limited to one or more of the following:

(a) You have begun medical treatment that is expected to last longer than ninety days and prevents your continued participation;

(b) You entered and will reside in a medical institution for an indefinite or considerable period of time;

(c) You entered a correctional institution (such as a prison, jail, reformatory, work farm, or detention center) or other institution designed for confinement or rehabilitation of criminal offenders for an indefinite or considerable period of time; or

(d) You are a member of the reserve forces of the military and you have been called into active military service for a period to exceed 90 days;

(4) You ask DVR to close your case because you are no longer interested in receiving VR services;

(5) You cannot be located or you have not responded to repeated attempts to contact you using the contact information that you provided;

(6) You have been transferred to another agency that better meets your needs;

(7) You decline to participate in required or agreed upon conditions or services at any point after signing an application, including prior to the determination of eligibility;

(8) Your actions or nonactions make it impossible to begin or continue DVR services;

(9) You require supported employment services, have explored all available options for securing resources for extended services or natural supports with your DVR counselor, and there is no reasonable expectation these services will become available.

NEW SECTION

WAC 388-891A-1310 How does DVR determine that I have achieved an employment outcome? DVR determines that you have achieved an employment outcome and no longer need VR services if:

(1) You received services under an IPE that helped you achieve the employment outcome on your IPE;

(2) Your job matches your unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice;

(3) You have been working at the same job for at least ninety days to ensure the stability of your employment;

(4) If you are in supported employment, you have been working for at least ninety days after you have stabilized in your employment and have transitioned to extended services (including natural supports) provided by a source other than DVR; and

(5) You and a DVR counselor agree the job is satisfactory, that you are performing the job well, and that you no longer require VR services.

NEW SECTION

WAC 388-891A-1311 When may DVR determine that I have achieved an employment outcome in self-employment? DVR may determine that you have achieved an employment outcome in self-employment if you meet the conditions outlined in WAC 388-891A-1310 and the following:

(1) The business (or entity) has been operating independently of DVR funding (except self-employment consulting for monitoring and follow-up) for at least ninety days after start-up;

(2) Your income is at or above the agreed upon income level established in your IPE and is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or performing similar tasks and who have similar training, experience, and skills;

(3) You have provided financial statements to DVR that document the business is self-sustaining; and

(4) You and your DVR counselor have discussed closure, agree that you meet the requirements in subsections (1), (2), and (3) of this section, and you have the skills needed to operate the business.

NEW SECTION

WAC 388-891A-1312 What does DVR do if it determines I have not achieved a self-employment outcome when my employment outcome is in self-employment? When you are working towards a self-employment outcome as outlined in WAC 388-891A-1311, DVR will close your case if:

(1) Strategies determined necessary for the business to be successful have not worked or you decline to or are unable to try them;

(2) You are unwilling to consider other types of competitive integrated employment options; and

(3) Your business is not successful based on the criteria agreed to in your IPE.

NEW SECTION

WAC 388-891A-1320 Am I involved in the decision to close my case? (1) Before closing your case, you will have an opportunity to discuss the decision with a DVR counselor. DVR notifies you in writing, or another method of communication as appropriate, about the reason DVR has made the decision to close your case.

(2) DVR will provide information about your rights to appeal DVR's decision and the client assistance program (CAP) so that you may seek assistance from CAP if you are dissatisfied with the determination.

NEW SECTION

WAC 388-891A-1330 When does DVR contact me after my case is closed? (1) DVR contacts you to determine your interests, priorities, and needs with respect to competitive integrated employment or training for competitive integrated employment every six months for the first two years after your case service record is closed and annually after that when:

(a) You achieve a supported employment outcome and earn wages below the federal minimum wage according to section 14(c) of the Fair Labor Standards Act while working toward competitive integrated employment; or

(b) You choose extended employment as defined in WAC 388-891A-0010(5).

(2) DVR will review your case within twelve months and annually thereafter at your request if you received supported employment services from DVR and your case was closed because you and your DVR counselor were unable to find a source for extended services.

(3) If DVR closes your case after determining you are ineligible due to the severity of your disability, DVR will conduct a review of your ineligibility determination within twelve months.

(a) If you request, DVR will contact you annually to discuss your situation after the first twelve months.

(b) DVR will no longer conduct these requested annual reviews in situations in which you have declined such reviews, you are no longer present in the state, your whereabouts are unknown, or your medical condition is rapidly progressive or terminal.

(4) DVR may contact you periodically to request information about your participation in VR services for program improvement purposes.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-891-0005 What is the purpose of this chapter?

WAC 388-891-0010 What definitions apply to this chapter?

WAC 388-891-0100 What personal information about me does DVR keep on file?

WAC 388-891-0103 Can DVR obtain personal information about you?

WAC 388-891-0110 What happens if DVR receives information that indicates I have a previous history of behavior involving violent or predatory acts?

WAC 388-891-0120 Can I ask DVR to change incorrect information in my case service record?

WAC 388-891-0130 Can DVR share personal information in my record with others?

WAC 388-891-0135 How does DVR protect personal information about drug, alcohol, HIV/AIDS and sexually transmitted diseases?

WAC 388-891-0140 Can I obtain copies of information in my case service record?

WAC 388-891-0150 How does DVR protect personal information that is released for audit, evaluation or research?

WAC 388-891-0200 Can a guardian or another representative act on my behalf with DVR?

WAC 388-891-0205 How do I ask for an exception to a rule in this chapter?

WAC 388-891-0210 What happens after I submit a request for an exception?

WAC 388-891-0215 What if a DVR counselor makes a decision about my VR services that I don't agree with?

WAC 388-891-0220 What is the client assistance program (CAP)?

WAC 388-891-0225 What is mediation?

WAC 388-891-0230 When can I ask for mediation?

WAC 388-891-0235 Who arranges and pays for mediation?

WAC 388-891-0240 Is information discussed during mediation confidential?

WAC 388-891-0245 If the mediation session results in an agreement, do I receive a written statement of the results?

WAC 388-891-0250 What is a fair hearing?

WAC 388-891-0255 How do I request a fair hearing?

WAC 388-891-0260 After I submit a request for a fair hearing, when is it held?

WAC 388-891-0265 What is a prehearing meeting?

WAC 388-891-0270 Do I receive a written fair hearing decision?

WAC 388-891-0275 Is the fair hearing decision final?

WAC 388-891-0295 Can DVR suspend, reduce or terminate my services if I request a fair hearing?

WAC 388-891-0300 Under what conditions does DVR provide and/or pay for vocational rehabilitation services to individuals?

WAC 388-891-0310 What VR services are provided without determining whether services or benefits are available from another program or organization?

- WAC 388-891-0320 What if looking for services and benefits available from another program would delay or interrupt my progress toward achieving an employment outcome?
- WAC 388-891-0325 Does DVR pay for a VR service if services and benefits are available from another program or organization, but I don't want to use them?
- WAC 388-891-0330 Does DVR consider academic awards and scholarships based on merit as comparable benefits?
- WAC 388-891-0340 How does DVR determine whether I must pay part of my VR services using my own financial resources?
- WAC 388-891-0345 Do I have to pay a portion of my VR services if I receive assistance or income support from another public program?
- WAC 388-891-0350 What financial information does DVR use to decide if I need to help pay for VR services?
- WAC 388-891-0355 How is the amount I pay for VR services determined?
- WAC 388-891-0360 What personal resources are not counted in the decision about whether I have to help pay for services?
- WAC 388-891-0365 What VR program services am I not required to help pay for?
- WAC 388-891-0370 Can I select the services and service provider of my choice?
- WAC 388-891-0400 What is informed choice?
- WAC 388-891-0410 How does DVR support the informed choice process?
- WAC 388-891-0420 What if I don't know how to use the informed choice decision making process?
- WAC 388-891-0430 What decisions can I make using informed choice?
- WAC 388-891-0440 What information and assistance will DVR provide to help me make informed choices about VR services and service providers?
- WAC 388-891-0500 What happens if DVR cannot serve every eligible person?
- WAC 388-891-0510 How are individuals selected for services when DVR is operating under an order of selection?
- WAC 388-891-0520 What are the criteria for priority category 1—Individuals with most severe disabilities?
- WAC 388-891-0530 What are the criteria for priority category 2—Individuals with severe disabilities?
- WAC 388-891-0540 What are the criteria for priority category 3—Individuals with disabilities?
- WAC 388-891-0600 What vocational rehabilitation services are available to individuals from DVR?
- WAC 388-891-0605 What are assessment services?
- WAC 388-891-0610 What are independent living services and/or evaluation?
- WAC 388-891-0615 What are information and referral services?
- WAC 388-891-0620 What are interpreter services?
- WAC 388-891-0625 What are job placement services?
- WAC 388-891-0630 What are job retention services?
- WAC 388-891-0635 What are maintenance services?
- WAC 388-891-0640 What are occupational licenses?
- WAC 388-891-0645 What are personal assistance services?
- WAC 388-891-0650 What are physical and mental restoration services?
- WAC 388-891-0655 What are the medical treatments DVR does not pay for?
- WAC 388-891-0660 What is rehabilitation technology?
- WAC 388-891-0665 Under what conditions does DVR provide vehicle modifications as a rehabilitation technology service?
- WAC 388-891-0670 What types of insurance can DVR pay for?
- WAC 388-891-0675 What types of assistive technology insurance can DVR pay for?
- WAC 388-891-0680 What types of assistive technology warranties can DVR pay for?
- WAC 388-891-0685 What are self-employment services?
- WAC 388-891-0690 What vocational rehabilitation services can DVR provide to my family member(s)?
- WAC 388-891-0695 What types of child care does DVR provide to my family members?
- WAC 388-891-0700 What is substantial counseling and guidance?
- WAC 388-891-0705 What are tools, equipment, initial stocks and supplies?
- WAC 388-891-0710 What are training services?
- WAC 388-891-0715 What is on-the-job training?
- WAC 388-891-0720 What is post-secondary training?

- WAC 388-891-0725 What is technical or vocational training?
- WAC 388-891-0730 What is basic education/literacy training?
- WAC 388-891-0735 What is community rehabilitation program (CRP) training?
- WAC 388-891-0740 What other training does DVR provide?
- WAC 388-891-0745 What conditions apply to receiving training services at an institution of higher education?
- WAC 388-891-0750 Can I receive training services from a private school, an out-of-state training agency or an out-of-state college?
- WAC 388-891-0755 What are transition services?
- WAC 388-891-0760 What are translation services?
- WAC 388-891-0765 What are transportation services?
- WAC 388-891-0770 Under what conditions does DVR provide a vehicle?
- WAC 388-891-0775 What happens if DVR has a question about my driving safety?
- WAC 388-891-0780 What other services does DVR provide?
- WAC 388-891-0790 What are post-employment services?
- WAC 388-891-0800 What is supported employment?
- WAC 388-891-0810 Who is eligible for supported employment?
- WAC 388-891-0815 Who decides if I am eligible for supported employment?
- WAC 388-891-0820 What is competitive work in supported employment?
- WAC 388-891-0825 What is an integrated setting in supported employment?
- WAC 388-891-0830 Is my work setting integrated if my interactions at the work site are with nondisabled supported employment service providers?
- WAC 388-891-0835 What is transitional employment?
- WAC 388-891-0840 What are supported employment services?
- WAC 388-891-0845 What are ongoing support services?
- WAC 388-891-0850 What are extended services?
- WAC 388-891-0855 Does DVR provide extended services?
- WAC 388-891-0860 Who provides the extended services I need?
- WAC 388-891-0865 What is natural support?
- WAC 388-891-0875 What is required for me to change from supported employment services to extended services?
- WAC 388-891-0880 What if my counselor and I cannot secure a source of extended services or natural supports?
- WAC 388-891-0885 Under what conditions does DVR close my case service record for supported employment?
- WAC 388-891-0890 Under what conditions does DVR provide supported employment services as post-employment services?
- WAC 388-891-0900 Who can apply for vocational rehabilitation services?
- WAC 388-891-0910 Am I required to provide proof of my identity and work status?
- WAC 388-891-0920 If I don't live in Washington, can I receive VR services?
- WAC 388-891-0930 Can I receive VR services if I am legally blind?
- WAC 388-891-0940 Can I receive VR services if I am Native American?
- WAC 388-891-0950 How do I contact DVR if I don't speak English?
- WAC 388-891-0960 What other methods of communication does DVR use?
- WAC 388-891-0970 Does DVR translate written communication for people who don't speak English?
- WAC 388-891-0980 How do I apply for VR services?
- WAC 388-891-1000 Who is eligible to receive VR services?
- WAC 388-891-1005 How does DVR determine if I am eligible?
- WAC 388-891-1010 After I submit my application to DVR, how long does it take DVR to make an eligibility decision?
- WAC 388-891-1015 What if a DVR counselor cannot presume that I am capable of working as a result of receiving VR services because of the severity of my disability?
- WAC 388-891-1020 Am I eligible for VR services if I receive Social Security disability benefits?
- WAC 388-891-1025 What criteria are not considered in the eligibility decision?
- WAC 388-891-1030 What is involved in a trial work experience?

- WAC 388-891-1035 What if I cannot participate in a trial work experience?
- WAC 388-891-1040 What is an extended evaluation?
- WAC 388-891-1045 What happens if DVR determines that I am not eligible or no longer eligible for VR services?
- WAC 388-891-1050 If I am not eligible for VR services, can DVR help me find other services and programs to meet my needs?
- WAC 388-891-1100 What is an assessment for determining vocational rehabilitation needs?
- WAC 388-891-1105 Do I have to disclose criminal history information to DVR?
- WAC 388-891-1110 What other assessments might be required?
- WAC 388-891-1115 What is an individualized plan for employment (IPE)?
- WAC 388-891-1120 Who develops an IPE?
- WAC 388-891-1125 What information does DVR provide to help me develop my IPE?
- WAC 388-891-1130 What are the options for developing an IPE?
- WAC 388-891-1135 Does DVR support any job I choose?
- WAC 388-891-1137 What if the employment goal I choose is religious in nature?
- WAC 388-891-1140 What must be included on the IPE form?
- WAC 388-891-1145 When does the IPE become effective?
- WAC 388-891-1150 Is the IPE reviewed and updated?
- WAC 388-891-1200 Under what conditions does DVR loan equipment, devices or other items to me?
- WAC 388-891-1210 What if I need an item customized for my own personal needs?
- WAC 388-891-1220 What conditions apply to the use of a device, tool, piece of equipment or other item that is loaned to me?
- WAC 388-891-1230 What happens if I fail to return a device, tool, piece of equipment or other item if requested by DVR?
- WAC 388-891-1240 What happens to a device, tool, piece of equipment or other item if I need it when my DVR case service record is closed?
- WAC 388-891-1300 Why does DVR close a case service record?
- WAC 388-891-1310 How does DVR determine that I have achieved an employment outcome?

- WAC 388-891-1320 Am I involved in the decision to close my case?
- WAC 388-891-1330 Under what conditions does DVR follow up with me after my case is closed?

WSR 18-13-053
PERMANENT RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed June 13, 2018, 11:57 a.m., effective July 14, 2018]

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

Purpose: 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.

Citation of Rules Affected by this Order: Amending SWCAA 476-030, 476-040, 476-050, 476-060, 476-070, 476-080.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 18-06-094 on March 6, 2018.

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Date Adopted: June 7, 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 ~~((nonasbestos))~~ 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.

~~((11))~~ (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 the 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 recreational 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.

~~((h))~~ (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.

~~((i))~~ (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 material 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;

~~((e))~~ (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 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 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; and

~~((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))~~ 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 Archi-

tect, 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 errors in the above material occurred in the copy filed by the 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 476-070 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,))~~ or ~~((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 18-14-001
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)
 [Filed June 20, 2018, 2:48 p.m., effective July 21, 2018]

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

Purpose: The department is amending chapter 388-845 WAC to align administrative rules with the waiver application approved by the Centers for Medicare and Medicaid Services (CMS). These rules are necessary in order for the developmental disabilities administration (DDA) to provide services approved by CMS and receive federal financial participation. 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.

Citation of Rules Affected by this Order: New WAC 388-845-0515, 388-845-0520, 388-845-0525, 388-845-1181, 388-845-1182, 388-845-1183, 388-845-1315, 388-845-1316, 388-845-1317, 388-845-1915, 388-845-1916 and 388-845-1917; repealing WAC 388-845-1000, 388-845-1010, 388-845-1015, 388-845-1200, 388-845-1205, 388-845-1210, 388-845-1840, 388-845-1845 and 388-845-1850; and amending WAC 388-845-0001, 388-845-0110, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0420, 388-845-0425, 388-845-0500, 388-845-0501, 388-845-0505, 388-845-0506, 388-845-0510, 388-845-0603, 388-845-0660, 388-845-0700, 388-845-0705, 388-845-0710, 388-845-0760, 388-845-0800, 388-845-0820, 388-845-0900, 388-845-0910, 388-845-1150, 388-845-1600, 388-845-1615, 388-845-1620, 388-845-1650, 388-845-1655, 388-845-1660, 388-845-1700, 388-845-1710, 388-845-1810, 388-845-1865, 388-845-1900, 388-845-2000, 388-845-2010, 388-845-2170, and 388-845-3070.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.120, 42 C.F.R. 441 Subpart G.

Adopted under notice filed as WSR 18-07-049 on March 14, 2018.

A final cost-benefit analysis is available 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.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, Amended 40, Repealed 9.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 12, Amended 40, Repealed 9.

Date Adopted: June 19, 2018.

Cheryl Strange
Secretary

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 18-15 issue of the Register.

WSR 18-14-002
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed June 20, 2018, 2:58 p.m., effective July 21, 2018]

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

Purpose: The developmental disabilities administration (DDA) amended chapter 388-832 WAC to remove references to the individual and family services (IFS) request list and require prior approval from the assistant secretary or designee for a community service grant project and limit community service grant projects to available funding. Other amendments clarify program requirements, eliminate unnecessary section divisions, and combine section content.

Citation of Rules Affected by this Order: New WAC 388-832-0186; repealing WAC 388-832-0007, 388-832-0020, 388-832-0022, 388-832-0023, 388-832-0024, 388-832-0025, 388-832-0045, 388-832-0050, 388-832-0055, 388-832-0060, 388-832-0070, 388-832-0072, 388-832-0075, 388-832-0080, 388-832-0082, 388-832-0087, 388-832-0090, 388-832-0091, 388-832-0095, 388-832-0100, 388-832-0110, 388-832-0113, 388-832-0114, 388-832-0115, 388-832-0123, 388-832-0125, 388-832-0127, 388-832-0128, 388-832-0132, 388-832-0135, 388-832-0137, 388-832-0139, 388-832-0145, 388-832-0150, 388-832-0155, 388-832-0160, 388-832-0166, 388-832-0168, 388-832-0175, 388-832-0180, 388-832-0190, 388-832-0195, 388-832-0205, 388-832-0210, 388-832-0220, 388-832-0225, 388-832-0240, 388-832-0245, 388-832-0255, 388-832-0260, 388-832-0270, 388-832-0275, 388-832-0285, 388-832-0290, 388-832-0305, 388-832-0308, 388-832-0310, 388-832-0320, 388-832-0325, 388-832-0330, 388-832-0331, 388-832-0332 and 388-832-0460; and amending WAC 388-832-0001, 388-832-0005, 388-832-0015, 388-832-0065, 388-832-0067, 388-832-0130, 388-832-0136, 388-832-0140, 388-832-0143, 388-832-0165, 388-832-0170, 388-832-0185, 388-832-0200, 388-832-0215, 388-832-0235, 388-832-0250, 388-832-0265, 388-832-0280, 388-832-0300, 388-832-0315, 388-832-0333, 388-832-0335, 388-832-0355, 388-832-0370, 388-832-0375, and 388-832-0470.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.161.

Adopted under notice filed as WSR 18-06-046 on March 1, 2018.

Changes Other than Editing from Proposed to Adopted Version: In WAC 388-832-0065, DDA removed "before your next annual assessment," which simplifies the subsection by removing an unnecessary reference for a point in time; this is clarification and not a substantive change. DDA

also replaced "are placed" with "reside" to make the language more person-centered.

In WAC 388-832-0130, DDA removed subsection (2), which simplifies the rule and does not change the effect of the rule because the proposed chapter amendments already require a person to use other resources before they use state-funded IFS. Subsection (2) was unnecessary.

In WAC 388-832-0136 and 388-832-0165, DDA clarified the language related to time frame expectations, which does not differ from the proposed rule substantively.

In WAC 388-832-0143 DDA made a citation to a WAC chapter more specific by replacing it with a citation to a specific section in that chapter.

In WAC 388-832-0333(6), DDA clarified that a person must have a reimbursement contract to receive reimbursement from DDA; this is not substantively different from the proposed rule.

A final cost-benefit analysis is available 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.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 26, Repealed 63.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 26, Repealed 63.

Date Adopted: June 19, 2018.

Cheryl Strange
Secretary

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 ((ADSA)) 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 ~~((the))~~ state-funded individual and family services (IFS) program ~~((the 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 1))~~ 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) (c) 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 your))~~, unless you reside 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 reside 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))? 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.

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0136 ((H) 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;))~~ on whichever date is earlier:

~~((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) No more than ninety days ~~((of))~~ after the date ~~((that the service was received))~~ of purchase; (and no later than)) or

(b) No more than 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 ~~((f))~~ 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? (1) 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 WAC 388-845-1620 apply; and

(b) The amount of your state-funded individual and family services annual allocation.

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 ~~((insurantee. 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 (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 as required under WAC 388-832-0136.

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.

(3) The provider making vehicle modifications must be a vehicle adaptive equipment vendor contracted with the developmental disabilities administration (DDA) to provide this service.

(4) 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.

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~~((s))~~.

(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~~((s))~~.

(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) 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.

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 con-

tracted 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 personal 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 may contract directly with a service provider or parent for the~~ (6) To receive reimbursement ~~((of))~~ for goods or services purchased ~~((by the family member))~~ for a DDA client, the purchaser must have a reimbursement contract with DDA.

~~((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 is effective.

(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.

(3) One-time awards must not exceed six thousand dollars in a twenty-four month period.

(4) One-time awards must be approved by the developmental disabilities administration's (DDA's) regional administrator or designee.

(5) Eligibility for a one-time award does not guarantee approval and authorization of the service by DDA because services are limited to available funding.

(6) You must have a DDA assessment before receiving a one-time award.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0355 What is an emergency service?

(1) 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.

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 388-832-0127 What if I have assessed needs that cannot be met by the IFS program?
- WAC 388-832-0128 When is the individual support plan effective?
- WAC 388-832-0132 May I request to exceed the level at which I was assessed?
- WAC 388-832-0135 How may my family use its IFS program allocation?
- WAC 388-832-0137 May I use my allocation over a two-year period for large costly expenditures?
- WAC 388-832-0139 If I have a significant change assessment, what happens to my allocation?
- WAC 388-832-0145 Who is eligible to receive respite care?
- WAC 388-832-0150 Where can respite care be provided?
- WAC 388-832-0155 Who are qualified providers of respite care?
- WAC 388-832-0160 Are there limits to the respite care I receive?
- WAC 388-832-0166 How are excess medical costs paid?
- WAC 388-832-0168 Are there limits to excess medical costs?
- WAC 388-832-0175 Who is a qualified therapist?
- WAC 388-832-0180 Are there limits to the therapy I may receive?
- 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?
- WAC 388-832-0255 Who is a qualified provider for transportation services?
- WAC 388-832-0260 Are there limitations to the transportation services I can receive?
- WAC 388-832-0270 Who is a qualified provider for training and counseling?
- WAC 388-832-0275 Are there limitations to the training and counseling?
- WAC 388-832-0285 Who is a qualified provider of behavior management?
- WAC 388-832-0290 Are there limits to behavior management?
- WAC 388-832-0305 Who are qualified providers for parent/sibling education?
- WAC 388-832-0308 How is parent/sibling education paid?
- WAC 388-832-0310 Are there limitations to parent/sibling education?
- WAC 388-832-0320 How are recreational opportunities paid for?
- WAC 388-832-0325 Are there limitations to recreation opportunities?
- WAC 388-832-0330 Do I have a choice of IFS program services?
- WAC 388-832-0331 May I receive IFS program services out-of-state?
- WAC 388-832-0332 May I choose my provider?
- WAC 388-832-0460 How will DDD notify me of decisions?

WSR 18-14-008**PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Children's Administration)

[Filed June 21, 2018, 3:37 p.m., effective July 22, 2018]

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

Purpose: The department is filing the permanent rules for chapter 388-27 WAC, Child welfare services—Adoption services and adoption support. These changes were made to reflect recent changes in state legislation regarding the adop-

tion support subsidy. Other changes are being made to clarify language and update the statutory authority.

Citation of Rules Affected by this Order: New WAC 388-27-0178 and 388-27-0208; and repealing WAC 388-27-0195, 388-27-0230, 388-27-0275, 38-27-0280, 388-27-0285, 388-27-0290 and 388-27-0300; and amending WAC 388-27-0120, 388-27-0130, 388-27-0135, 388-27-0140, 388-27-0145, 388-27-0150, 388-27-0155, 388-27-0160, 388-27-0165, 388-27-0175, 388-27-0180, 388-27-0185, 388-27-0190, 388-27-0200, 388-27-0205, 388-27-0210, 388-27-0215, 388-27-0220, 388-27-0250, 388-27-0255, 388-27-0260, 388-27-0265, 388-27-0295, 388-27-0305, 388-27-0310, 388-27-0320, 388-27-0325, 388-27-0330, 388-27-0335, 388-27-0340, 388-27-0365, 388-27-0370, 388-27-0375, 388-27-0380, 388-27-0385, and 388-27-0390.

Statutory Authority for Adoption: 42 U.S.C. § 671-675, RCW 26.33.340, 74.13A.020, 74.13A.030, 74.13A.040, 74.13A.045, 74.13A.047, 74.13A.060, 74.13A.075, 74.13A.085, 74.13A.100, 74.15.020, 45 C.F.R. Sec. 1356.40.

Other Authority: For WAC 388-27-0120 is RCW 74.13A.020(1); for WAC 388-27-0130 is RCW 74.13A.020, 74.13A.060, 74.13A.075, 74.13A.085, 74.13A.100, 74.15.020; for WAC 388-27-0135, 388-27-0140, 388-27-0145, 388-27-0150, 388-27-0155, 388-27-0180 and 388-27-0215 is RCW 74.13A.020; 42 U.S.C. § 671-675; for WAC 388-27-0160, 388-27-0165, 388-27-0185, 388-27-0190, 388-27-0255, 388-27-0310 and 388-27-0320, is RCW 74.13A.020; for WAC 388-27-0175 and 388-27-0178 is RCW 74.13A.020; 42 U.S.C. § 671-675, 45 C.F.R. Sec. 1356.40; for WAC 388-27-0200, 388-27-0205 and 388-27-0265 is RCW 74.13A.020, 74.13A.040; for WAC 388-27-0208 is RCW 74.13A.020; 42 U.S.C. § 671-675; for WAC 388-27-0210 is RCW 74.13.031(11), 74.13A.020; 42 U.S.C. § 671-675; for WAC 388-27-0220 and 388-27-0250 is RCW 74.13A.025, 74.13A.030, 74.13A.045, 74.13A.047; for WAC 388-27-0260 is RCW 74.13A.020, 74.13.080, WAC 388-25-0025; for WAC 388-27-0295 is RCW 74.13A.020, 74.13A.040, 74.13A.045; for WAC 388-27-0305 is 45 C.F.R. § 1356.40; for WAC 388-27-0325, 388-27-0330, 388-27-0335 and 388-27-0340 is RCW 74.13A.020, 74.13A.085; for WAC 388-27-0365 is RCW 74.13A.020, 74.13A.040, 74.13A.050, 74.13A.055; for WAC 388-27-0370 is RCW 26.33.340, 74.13A.020, 74.13A.060; for WAC 388-27-0375, 388-27-0380, 388-27-0385, and 388-27-0390 is RCW 74.13A.020, 74.13A.060.

Adopted under notice filed as WSR 18-09-069 on April 16, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 36, Repealed 7.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 36, Repealed 7.

Date Adopted: June 21, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0120 What is the legal basis of the department's adoption support program? The legal authorities for the program are:

(1) ~~((Revised Code of Washington (RCW) 74.13.100 through 74.13.159)) Chapter 74.13A RCW;~~

(2) ~~((Chapter)) 42 ((United States Code (U.S.C.)) U.S.C. Sec. 671-675; ((and))~~

(3) ~~45 C.F.R. Sec. 1356; and~~

(4) The U.S. department of health and human services (DHHS) policy guidelines for states to use in determining a child's eligibility for Title IV-E adoption assistance benefits (contained in DHHS Child Welfare Policy Manual).

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0130 What definitions apply to the adoption support program? The following definitions apply to this chapter:

"**Adoption**" means the granting of an adoption decree consistent with chapter 26.33 RCW.

"**Adoption support agreement**" means a written contract between the adoptive parent(s) and the department that identifies the specific ~~((support))~~ benefits available to the adoptive parent(s) and other terms and conditions of the agreement.

"**Adoption support cash payment**" means negotiated monthly cash payments paid pursuant to an adoption support agreement between the adoptive parent(s) and the department ~~((after the child's adoption)).~~

"**Applicant**" means a person or couple applying for adoption support on behalf of a child the person or couple plans to adopt.

"**Child placing agency**" means a private nonprofit agency licensed by the department under chapter 74.15 RCW to place children for adoption or foster care.

"**Department**" means the department of social and health services.

"**Extenuating circumstances**" means a finding by an administrative law judge or a review judge that one or more ~~((certain))~~ qualifying conditions or events occurred that erroneously prevented an otherwise eligible child from being placed on the adoption support program prior to adoption.

"**Medical services**" means services covered by medic-aid ~~((f))and administered by the ((medical assistance admin- istration) unless defined differently in the adoption support agreement))~~ health care authority.

"**Negotiation**" means the process of working toward an agreement between the department and the adoptive parent

on the terms of the adoption support agreement (~~(including any amount of monthly cash payment)~~).

"Nonrecurring costs" means reasonable, necessary, and ~~((directly))~~ direct expenses related to the cost of finalizing the adoption (~~((fees, court costs, attorney fees, and other expenses the adoptive parent incurs when finalizing the adoption))~~) of a special needs child. ~~((Total reimbursement from the department may not exceed one thousand five hundred dollars.))~~

"Placing agency" means the public or private nonprofit agency that has the legal authority to place the child for adoption. ~~((This may be the department or a private nonprofit child placing agency.))~~

"Program" means the department's adoption support program.

"Reconsideration" means the limited state-funded support that may be available to an eligible child whose adoption was finalized without a valid adoption support agreement in place.

"Resident state" (for purposes of the child's medicaid eligibility) means the state in which the child physically resides. In some cases this may be different from the state of the parent's legal residence.

~~((**"Special needs"** means the specific factors or conditions that apply to the child and that may prevent the child from being adopted unless the department provides adoption support services. See WAC 388-27-0140 for a detailed description of the factors or conditions.))~~

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0135 What are the eligibility criteria for the adoption support program? For a child to be eligible for participation in the adoption support program, ~~((the department must first determine that adoption is the most appropriate plan for the child. If the department determines that adoption is in the child's best interest,))~~ the child must:

(1) Be less than eighteen years old when the department and the adoptive parents sign the adoption support agreement and at the time the adoption is finalized;

(2) Be legally free for adoption or eligible for a customary adoption;

(3) ~~((Have))~~ Be placed with a family with an approved preplacement report or home study (see RCW 26.33.190);

(4) Be a child with "special needs" ((factor or condition according to the definition in this rule (see)) as defined in WAC 388-27-0140); and

~~((4))~~ (5) Meet at least one of the following criteria:

(a) Is residing in ((state funded)) a foster ((care)) home or child caring institution or was determined by the department to be eligible for and likely to be so placed (For a child to be considered "eligible for and likely to be placed in foster care" the department must have opened a case and determined that removal from the home was in the child's best interest((-)); or

(b) Is eligible for federally funded adoption assistance as defined in Title IV-E of the Social Security Act, the ~~((Code of Federal Regulations))~~ C.F.R., and the U.S. ~~((Department of Health and Human Services establishing))~~ DHHS guidelines

for states to use in determining a child's eligibility for Title IV-E adoption assistance.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0140 What constitutes a "special needs"? To be considered a child with special needs the following three statements must be true:

(1) One or more of the following factors or conditions must exist, the child is:

(a) ~~((The child is))~~ Of a minority ethnic background and the child's ethnicity is creating a barrier to the child's adoption;

(b) ~~((The child is))~~ Six years of age or older at the time of application for adoption support;

(c) ~~((The child is))~~ A member of a sibling group of three or more or of a sibling group in which one or more siblings meets the definition of special needs, as defined in this section;

(d) ~~((The child is))~~ Diagnosed with a physical, mental, developmental, cognitive or emotional disability; or

(e) ~~((The child is))~~ At risk for a diagnosis of a physical, mental, developmental, cognitive or emotional disability due to prenatal exposure to toxins, a history of serious abuse or neglect, or genetic history.

(2) The state has determined that the child cannot or should not be returned to the home of the ~~((biological))~~ legal parent; and

(3) The department, other public or private non-profit child welfare agency, or child placing agency that placed the child for adoption ~~((must document))~~ has documented that except where it would be against the best interests of the child, the ~~((department or child))~~ placing agency ~~((had))~~ made a reasonable but unsuccessful effort to place the child for adoption without adoption support.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0145 What constitutes a reasonable effort to place a child for adoption without adoption support? Reasonable effort to place a child without adoption support includes a child:

(1) ~~((A child))~~ Registered for three months with the Washington adoption resource exchange (WARE) without finding an adoptive family; ((or))

(2) ~~((A child))~~ For whom a documented, ((formal)) agency search was conducted by the placing agency for three months, without finding a family who would adopt the child without adoption support services; or

(3) ~~((A child))~~ For whom the placing agency's selected prospective adoptive family is unable to adopt the child without assistance from the adoption support program.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0150 Under what circumstances would it be against the best interest of the child to search for a family that could adopt the child without adoption sup-

port? (~~Searching for a family that could adopt the child without adoption support is against the best interest of the child when:~~)

(1) ~~When~~ a foster parent desires to adopt a child who:

(a) Has been in the foster parent's home for ~~((six))~~ three months or more before that child becomes legally free for adoption; ~~((and))~~

(b) The child has close emotional ties to the current foster parent which, if severed, may cause emotional damage to the child; and

(c) The foster parent has an approved adoptive home study, and is identified as the adoptive parent of choice by the department or placing agency staff ~~((having responsibility for the child))~~ (RCW 26.33.190 ~~((and 74.13.109(4)))~~); or

(2) The adoptive parent is a relative of ~~((specified degree))~~ the child as defined in RCW ~~((74.15.020 (4)(a)))~~ 74.15.020 (2)(a) and has an approved adoptive home study ~~((per))~~ that meets the requirements of RCW ~~((26.33.109 and 74.13.109(4)))~~ 26.33.190.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0155 Are there other factors affecting a child's eligibility for adoption support? (1) A child is not eligible for adoption support program services and payments if the adopting parent is the birth parent or current stepparent of the child.

(2) The department must not use the adoptive parents' income as a basis for determining the child's eligibility for the adoption support program, however, the department must consider income and other financial circumstances of the adopting family as one factor in determining the amount of any adoption support cash payments to be made. ~~((See WAC 388-27-0230.))~~

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0160 How does a prospective adoptive parent apply for adoption support ~~((services))~~? ~~((There are two ways a prospective adoptive parent (applicant) may apply for adoption support services:))~~

(1) An applicant may apply through the public or private agency social worker of the child to be adopted, if the child is in the custody of the department. The social worker ~~((must))~~ will:

(a) Register the child with the adoption support program; and

(b) Submit the applicant's completed program application along with a completed worksheet used to assist the family and the department in ~~((determining services and))~~ negotiating the amount of any monthly cash payment ~~((, if needed, based on the needs of the child and family circumstances)).~~

(2) An applicant may also apply directly to the adoption support program for adoption support ~~((services))~~ if ~~((:~~

~~((a))~~ the child does not have an assigned social worker ~~((:~~

~~((or~~

(b) The applicant and the social worker have a dispute regarding the content of the program application).

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0165 What requirements apply to an application for ongoing adoption support? (1) The application must include a copy of the child's medical and family background report signed by the adoptive parent(s) (DSHS 13-041 ~~((minus the attachments)))~~. It must also include copies of department records or medical ~~((and/or))~~ or therapist reports that document the child's physical, mental, developmental, cognitive or emotional disability, or risk of any such disability.

(2) The applicant must include a copy of a preplacement report or home study completed by the department, an agency, or an individual approved by the court (see RCW 26.33.190(1)).

(3) If the applicant is requesting a monthly cash payment, the applicant and the department must mutually ~~((determine both the type and))~~ agree to the amount of the payment according to the requirements of WAC ~~((388-27-0230))~~ 388-27-0220.

~~((3))~~ (4) If the applicant is requesting reimbursement of nonrecurring costs, the applicant must include this request in the application. (See WAC 388-27-0380 and 388-27-0385 for the type and amount of expenses the department may reimburse.)

~~((4))~~ (5) The applicant must furnish a copy of the applicant's most recently filed federal income tax return. If the applicant is not required to file a federal income tax return, the applicant must submit a financial statement with the applicant's adoption support application.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0175 What must be included in an adoption support agreement? The adoption support agreement must:

(1) State the amount of any cash payments ~~((if any))~~ the department must make to the adoptive parent(s) on behalf of the child;

(2) ~~((Include an itemized list of the additional services (including Title XIX))~~ State that the child is eligible for medical assistance through medicaid ~~((and Title XX social services) for which the child is eligible));~~

(3) ~~((Contain statements that:~~

~~((a) Assure))~~ State that participation in the adoption support program ~~((must))~~ will continue, as long as the child is eligible, regardless of where the adoptive family resides;

~~((b) Inform the adoptive parent(s) of specific))~~ (4) State that a change in the adoptive family's circumstances ~~((that))~~ or the child's needs may warrant further renegotiation and adjustment of the payment as mutually agreed to by the adoptive parents and the department;

~~((c) Inform the adoptive parent(s) that the agreement must be reviewed every five years. Terms of))~~ (5) State the basis for termination or suspension of benefits under the agreement ~~((may be modified according to WAC 388-27-0200)); and~~

~~((d) Inform the adoptive parent(s) that the department may suspend a child from the program within thirty days of~~

any changes in circumstances (of the child or family) that affect the child's eligibility for program payments if the adoptive parent has failed to notify the department of the changes; and

(e) Define the circumstances under which the agreement may be terminated.

~~(4) Be signed by all relevant parties before the final adoption decree is issued (45 C.F.R. Sec. 1356.40))~~ (6) Include information that a youth adopted after age fourteen may have continued eligibility in the college bound scholarship program.

NEW SECTION

WAC 388-27-0178 When must the adoption support agreement be signed? The adoption support agreement must be signed by all parties before the final adoption decree is issued.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0180 If the adoptive family resides in or moves to another state, how is the child's participation in the adoption support ((services)) program affected? If the adoptive family resides in or moves to another state the child's participation in the adoption support program is affected as follows:

(1) ~~((Social services (Title XX) become the responsibility of the new state of residence))~~ Washington state remains responsible for any monthly cash payments made to the adoptive parent(s) on behalf of the child or any non-medicaid counseling that has been preauthorized by the adoption support program.

(2) If the child is not eligible for the Title IV-E adoption support program, medical benefits (Title XIX medicaid) remain the responsibility of Washington state ((if) until the child ((is not) becomes eligible for ((federal Title IV E adoption assistance. However, Washington state is no longer responsible if the child becomes eligible for)) the resident state's Title XIX program ((through the Interstate Compact on Adoption and medical assistance or other eligibility factors)).

(3) If the child is eligible for Title IV-E adoption support, medical benefits (Title XIX medicaid benefits) become the responsibility of the resident state((if the child receives Title IV-E adoption assistance)).

(4) Medicaid benefits included in Washington state's medicaid plan, but not included in the resident state's plan, ~~((must))~~ remain the responsibility of Washington state and subject to Washington state's plan limits and requirements.

~~((5) Washington state remains responsible for any cash payments made to the adoptive parent(s) on behalf of the child or any nonmedicaid counseling that has been preauthorized by the adoption support program per WAC 388-27-0245.))~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0185 When does the adoption support agreement become effective? ~~((1) Unless otherwise stated in the adoption support agreement, an))~~ The adoption support agreement takes effect on the ((first)) day ((of the month following the month in which)) the ((court finalizes the adoption.

~~(2) If the child to be adopted needs support benefits prior to finalization, the assigned regional adoption support program manager may arrange an early effective date. To be eligible for an early effective date, the applicant must:~~

~~(a) Have an adoption support agreement signed by all parties;~~

~~(b) Sign the child's medical and family background report (DSHS 13-041) and a statement of the applicant's intention to adopt; and~~

~~(c) Have the department's designee sign "an exception to policy" statement))~~ adoption is finalized unless an agreement for earlier implementation of the agreement has been agreed to by all parties.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0190 ((If the department implements adoption support services prior to the adoption, may the adoptive parent(s) continue to receive department-funded foster care payments while also receiving adoption support)) When will department-funded foster care and foster day care payments end? (1) ~~((The adoptive parent(s) may not continue to receive department funded))~~ Foster care payments ((for a child while also receiving adoption support payments for the same child)) are paid after the month of service. Adoption support payments are paid prior to the month.

(2) If the adoptive parent(s) receives department-funded foster care and foster care child care for the child to be adopted, the department's social worker assigned to the child ~~((must))~~ will terminate that coverage on the ~~((last))~~ day ~~((of the month preceding the month in which the adoption support becomes effective))~~ prior to the date the early implementation adoption support agreement was signed, or the day prior to the finalization of the adoption.

~~(3) ((Foster care payments are paid after the month of service. Adoption support payments are paid prior to the month.~~

~~(4) The adoptive parent(s) may not receive foster care payments and adoption support cash payments for the same child for the same month.~~

~~(5))~~ If the adoptive parent is adopting a relative child and has been receiving ((a nonneedy relative grant)) funding through TANF the adoptive parent must notify the community services office financial services specialist that payment has been initiated through the adoption ~~((has been finalized))~~ support program. The adoptive parent may not receive both the TANF grant and adoption support payments for the same month for the same child.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0200 ~~When may ((the department modify)) the terms of the adoption support agreement be modified?~~ The ~~((department's adoption support program may modify the))~~ terms of an adoption support agreement may be changed or modified only if both the adoptive parent(s) and the department agree to the modification. The department will consider a modification when:

(1) ~~((At the request of))~~ Requested by the adoptive parent(s);

(2) ~~((When))~~ In the view of the department, it appears that specific circumstances warrant renegotiation and adjustment of monthly cash payment ((as agreed to by the adoptive parents and the department));

(3) ~~((When the department loses contact with the adoptive parent(s);~~

(4) ~~When))~~ The child is placed outside of the adoptive parents' home at department expense; or

~~((5) If)~~ (4) The adoptive parent ((is no longer providing for the child's daily care and living expenses; or

~~(6) If the adoptive parent fails to notify the department's adoption support program within thirty days of a change of circumstance which affects the adopted child's continuing eligibility for adoption support program cash payments or services))~~ has agreed to an automatic reduction clause in the agreement and the clause states that, based on the anticipated reduction in the needs of the child (for child care for example), the amount will be reduced on a specific date.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0205 Does the adoptive parent need to let the department know if the family's circumstances change? The adoptive parent must inform the department's adoption support program of circumstances that might ~~((make))~~ affect the ((parent and the adoptive child either ineligible for)) child's eligibility for adoption assistance ~~((payments or))~~ benefits ((or eligible for adoption assistance payments or benefits in different amounts)), might result in an overpayment or missed payment, or might lead to modification of the agreement. Such changes include but are not limited to a:

(1) ~~((A))~~ Significant change in the child's condition;

(2) ~~((A))~~ Change in the marital status of the adoptive parent(s);

(3) ~~((A))~~ Change in the legal or physical custody of the child; or

(4) ~~((A))~~ Change in the adoptive family's mailing address.

NEW SECTION

WAC 388-27-0208 Under what circumstances are benefits under the adoption support agreement suspended? (1) The monthly cash payment may be suspended if:

(a) The department cannot establish that the:

(i) Parents are legally responsible for the support of the child; or

(ii) Child is receiving any support from the parents; and

(b) Department has provided notice to the parents of the department's determination under subsection (1)(a)(i) or (ii) of this section, and of its intent to suspend the monthly cash payment in thirty days, if the parent does not provide documentation within that time to refute the department's determination; and

(c) Parents fail to provide satisfactory documentation.

(2) If the parents provide satisfactory documentation of continued legal responsibility and financial support for the child, the payment may not be suspended. If the parents fail to provide satisfactory documentation, the department must send a notice stating the payment will be suspended. The parents have a right to request a hearing to challenge the suspension and must be provided notice of that right.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0210 Under what circumstances would the adoption support agreement be terminated? The adoption support agreement is terminated according to the terms of the agreement or if any one of the following events occurs:

(1) The child reaches eighteen years of age ~~((; if a)), unless:~~

(a) The child ((is at least eighteen but less than twenty-one years old)) was adopted at age sixteen or older and meets the requirements of an eligible category for the extended foster care program as described in RCW 74.13.031(11). In such cases, the department may extend the terms of the adoption support agreement so long as the child continues to fall within an eligible category and the adoptive parent continues to provide ongoing financial support or the youth turns twenty-one, whichever occurs first. Under no circumstances may the department extend the agreement beyond the child's twenty-first birthday.

(b) The child was adopted prior to age sixteen and is ((a)) attending high school full((-))time in a curriculum leading to a high school ((student or working full time toward the completion of)) diploma or is attending an instructional program leading to a GED ((t)) or high school equivalency((t)) certificate (HSEC) and continues to receive financial support from the adoptive parent(s), the department may extend the terms of the adoption support agreement until the child completes high school or achieves a ((GED)) HSEC. Under no circumstances may the department extend the agreement beyond the child's twenty first birthday.((t))

(c) Adoption support benefits will automatically stop on the child's eighteenth birthday unless the parent(s) requests continuation per this rule and have provided documentation of the child's continuation in school or other qualifying program. To prevent disruption in services the parent should contact the adoption support program at least ninety days prior to the child's eighteenth birthday if continued services are to be requested.

(2) ~~((The adoptive parents no longer have legal responsibility for))~~ Upon the child's death;

(3) ~~The ((adoptive)) child is under eighteen years and the department determines the parents are no longer ((providing financial)) financially or legally responsible for the support ((for)) of the child;~~

(4) ~~The child ((dies)) is under eighteen years old and the department determines the child is no longer receiving any support from the parents; or~~

(5) ~~The adoptive parents die. (A child who met federal Title IV-E eligibility criteria for adoption assistance will be eligible for adoption assistance in a subsequent adoption.)~~

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0215 ~~What benefits ((may the)) are available to adoptive ((parent or child receive from)) parents through the adoption support program?~~ The adoption support program ~~((may provide one or more of the following benefits))~~ provides:

(1) ~~Reimbursement for nonrecurring adoption finalization costs;~~

(2) ~~Monthly cash payments, as negotiated by the parties;~~

(3) ~~Payment for counseling services as preauthorized which are not available from the state's medicaid mental health services (see WAC 388-27-0255 for conditions and terms); ((or)) and~~

(4) ~~Medical ((services)) assistance through the department's medicaid program.~~

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0220 ~~What factors affect the amount of the monthly adoption support ((benefits a child)) payments an adoptive parent receives? ((The department bases the amount of support it provides on the child's needs and the family's circumstances, but limits the cash payment to an amount that does not exceed the foster care maintenance rate the child would receive if the child was in a foster family home. Specific circumstances as agreed to by the adoptive parent and the department in the agreement, may warrant future renegotiation and adjustment of the payment determined in an assessment of the child.))~~ (1) The amount of the adoption support monthly cash payment is determined through the discussion and negotiation process between the adoptive parents and representatives of the department based upon the needs of the child and the circumstances of the family. The payment that is agreed upon should combine with the parents' resources to cover the ordinary and special needs of the child projected over an extended period of time. Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.

(2) Family circumstances to be considered include:

(a) Size, including the adopted child;

(b) Normal living expenses, including education and childcare expenses;

(c) Exceptional circumstances of any family member;

(d) Income;

(e) Resources and savings plans;

(f) Medical care and hospitalization needs;

(g) Ability to purchase or otherwise obtain medical care; and

(h) Additional miscellaneous expenses related to the adopted child.

(3) The department and the adoptive parents will jointly determine the level of adoption support cash payments needed to meet the basic needs of the child without creating a hardship on the family. However, under no circumstances may the amount of the adoption support monthly cash payment the department pays for the child exceed the statutory cap for the adoption support maintenance payment, under RCW 74.13A.047.

(4) Where warranted, and where specifically set forth in the agreement, the adoptive parents and department may agree that specific circumstances require a particular payment for a limited period of time and, as set forth in the agreement, the payment will be automatically adjusted or renegotiated at the expiration of the time period.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0250 ~~What specific department requirements apply to medical services? ((+))~~ While an adoption support agreement remains in effect, medical assistance for the child is provided through the department's ((medical)) medicaid program ((rules)) and the medicaid program requirements apply ((to the adopted child)).

~~((2) The department must make all medical payments according to established department procedures and directly to the child's physician(s) or service provider(s).)~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0255 ~~What specific department requirements apply to outpatient counseling ((and/or)) or mental health services not covered by medicaid? ((When))~~ (1) The department's adoption support program directly pays for a child's counseling ((and/or)) or mental health services, when the following conditions apply:

~~((+))~~ (a) The adoptive parent must obtain written authorization from the department's adoption support program before the service is rendered;

(b) The adoptive parent must explain why these services are not available through the medicaid provider network or through private insurance;

~~((2))~~ (c) The adoptive parents' primary health care coverage must be billed prior to billing the department's adoption support program;

~~((3))~~ (d) The department will pay the adoption support program's ((authorized)) preauthorized rate minus any payment made by the primary (and other) insurer;

~~((4))~~ (e) The department may grant verbal authorization for no more than three counseling sessions prior to providing the required written authorization; and

~~((5))~~ (f) The child's therapist or other treatment provider must submit a written treatment plan prior to authorization for continued treatment((:)).

~~((6))~~ (2) The department may authorize counseling as follows:

(a) Up to six hours of outpatient counseling per month for up to twelve months; ~~((e))~~

(b) Up to a total of twenty hours per quarter when critical need warrants;

(c) For only one provider at a time unless a second provider is required for a different service; or

(d) Evidence based programs contracted by the department to help stabilize the child in the adoptive home if those programs are pertinent to the needs of the child and family.

~~((7))~~ (3) The department may extend the authorization for counseling (beyond the initial time period authorized) upon receipt of an updated treatment plan and documentation supporting the need for additional treatment from the treatment provider and a parent's request for continuing counseling ~~((DSHS 10-214))~~;

~~(8) The department may authorize this service for only one provider at a time unless a second provider is required for a different service).~~

~~(9) The department encourages adoptive parents to seek an annual assessment of the functioning of the adoptive child within the family to determine if there are mental health services needed to help maintain and/or strengthen the adoptive placement)~~ (4) The provider must provide services to the client face-to-face, i.e., in the same room except where face-to-face services are not reasonably accessible to the child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0260 If the adoptive parent requests residential placement services for ~~((the parent's))~~ their adopted child, what department requirements apply? (1) The adoption support program ~~((must))~~ is not able to pay for residential treatment placements of children who are not in department custody. See RCW 74.13.080 and WAC 388-25-0025.

(2) If the adoptive parent ~~((requests))~~ is in need of residential treatment services for a child, the department will make the following referrals:

(a) For treatment of a mental illness, the department ~~((must))~~ will refer the family to the local ~~((regional support network (RSN)))~~ mental health treatment provider;

(b) If the child has been diagnosed with a ~~((diagnosis of))~~ physical, mental, developmental, cognitive or emotional disability ~~((is present))~~, the department ~~((staff must))~~ will refer the ~~((child))~~ family to the ~~((division of))~~ developmental disabilities ~~((DDD))~~ administration (DDA) to determine ~~((eligibility of))~~ whether the child is eligible for services ~~((for which the child might be eligible))~~; or

(c) For reasons other than treatment of mental illness or developmental disabilities, the department ~~((staff must))~~ will refer the adoptive parent to ~~((the))~~ child welfare services ~~((intake))~~ at the local children's administration office ~~((of the division of children and family services (DCFS)).~~

~~(3) The adoption support program manager may assist the adoptive parent in arranging residential service for the child but must not be responsible for the child's placement or for the payment of the residential service).~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0265 What are the consequences of ~~((the department placing the))~~ an adopted child being placed in foster care ~~((, group care, or residential treatment))~~? (1) If a child is on active status with Washington state's adoption support program and the department places the child in foster care ~~((, group care, or residential treatment))~~, the department ~~((may report))~~ is required to refer the case to the division of child support and the program may report that good cause exists for not pursuing collection of support payments.

(2) The department ~~((must))~~ may review the adoption support agreement and ~~((must discontinue))~~ may renegotiate the amount of any cash payments to the adoptive parent during the child's out-of-home placement ~~((unless the adoptive parent(s) documents continuing expenses directly related to the child's needs)).~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0295 What ~~((requirements apply))~~ process applies to ~~((the review))~~ a request for modification of a support agreement? (1) The adoptive parent ~~((and the department must))~~ may request an opportunity to negotiate ~~((any changes in the agreement that result from a review;))~~ a modification of the adoption support agreement's monthly cash payment provision if there is a change in the needs of the child or in the circumstances of the family. The request must be in writing.

(2) ~~((Changes in the terms of))~~ The adoption support program must initiate a review of the adoption support agreement ~~((may be retroactive to the date the department received the written request; and))~~ no later than thirty days after receiving the adoptive parent's request for modification of the agreement.

(3) ~~((If the department modifies the terms of the agreement, the adoptive parent and the department must sign a new agreement))~~ The adoptive parent must provide supporting documentation when requested by the department.

(4) The department may request a copy of the adoptive parents' most recently filed federal tax return. If not required to file a federal tax return the adoptive parent(s) must submit a financial statement when requested by the department.

(5) The adoptive parent may request that the child's medical provider complete an early periodic screening, diagnosis, and treatment (EPSDT) examination and submit a report of the results to the adoption support program.

(6) The adoptive parent and the department will negotiate in an attempt to reach agreement on the request for modification.

(7) If the parties modify the terms of the agreement, the adoptive parent and the department must sign a new agreement.

(8) If the agreement is modified, the changes in the terms of the agreement will be retroactive to the first day of the month in which the department received the written request.

(9) If an agreement cannot be reached, the department will deny the request for modification and must provide the

adoptive parent with written notice of the denial and of the right to appeal.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0305 May an adoptive parent apply for adoption support services after the adoption has been finalized? Federal ~~((and state))~~ laws and rules require that a prospective adoptive parent must apply for adoption assistance prior to adopting a special needs child and that the prospective adoptive parent must have a valid adoption support agreement, signed by all parties, before the adoption is finalized.

However, ~~((both state and))~~ the federal government~~((s have recognized))~~ recognizes that in some situations there may have been extenuating circumstances that prevented the eligible child from being placed on the adoption support program prior to adoption. ~~((For these situations separate remedies have been created depending on which eligibility criteria are met by the child.))~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0310 If a child met federal Title IV-E eligibility for adoption assistance before the adoption, but was not placed on the ~~((adoptive))~~ adoption support program, what may the adoptive parent do after adoption finalization to obtain adoption support services for the adopted child? For a child who met the Title IV-E eligibility criteria for adoption assistance prior to adoption, federal rules allow for a possible finding of extenuating circumstances through an administrative hearing process. In these situations, the adoptive parent must apply for adoption support. The department will deny the application and the adoptive parent may then request a review by an administrative law judge or a review judge to ~~((obtain an order authorizing the department to enter into a))~~ determine if extenuating circumstances exist that justify the department's post-adoption agreement to provide adoption support services to a special needs child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0320 What is the effective date of an adoption support agreement that results from a finding of extenuating circumstances? ~~((The effective date of an adoption))~~ A support agreement ~~((the department and the adoptive parent have))~~ entered into as a result of a finding of extenuating circumstances may not be effective before the date the department received the written request for participation in the adoption support program from the adoptive parent ~~((for participation in the adoption support program))~~. Under no circumstances may the department back date an adoption support agreement more than two years from the date of an order of an administrative law judge or review judge authorizing the department to enter an adoption support agreement after finalization of the adoption.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0325 If a child did not meet federal Title IV-E eligibility for adoption assistance before the adoption, ~~((what may the adoptive parent do after))~~ may the child qualify for adoption ~~((finalization to obtain adoption))~~ support ~~((services for the adopted child))~~ after adoption finalization? For children ineligible for federal Title IV-E Adoption Assistance, the department may provide limited support through the state-funded adoption support reconsideration program, when the program is funded by the legislature.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0330 What is the adoption support reconsideration program? (1) When funded by the legislature, the adoption support reconsideration program allows the department to register an eligible adopted child for limited state-funded support (see RCW 74.13.150).

(2) The reconsideration program provides for payment of medical and counseling services to address the physical, mental, developmental, cognitive, or emotional disability of the child that resulted in the child's eligibility for the program. Payments are made directly to the provider, not to the adoptive parents.

(3) The adoptive parents' basic health insurance must provide primary coverage and must be used before billing the reconsideration program. The adoption support reconsideration program must be the secondary insurer.

(4) There is a twenty thousand dollar per child lifetime cap on this program.

~~((4))~~ (5) The program requires the adoptive parent and the department to sign an adoption support reconsideration agreement specifying the terms, conditions, and length of time the child will receive limited support.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0335 How does a child qualify for the adoption support reconsideration program? To be eligible for the adoption support reconsideration program, a child must:

(1) Have resided, immediately prior to adoption finalization, in a department funded pre-adoptive placement or in department funded foster care;

(2) Have a physical or mental ~~((handicap))~~ disability or emotional disturbance that existed and was documented before adoption or was at high risk for future physical or mental ~~((handicap))~~ disability or emotional disturbance due to conditions ~~((to which))~~ the child was exposed to before adoption;

(3) Reside in Washington state with an adoptive parent who lacks the financial resources to care for the child's special needs; and

(4) Be covered by a primary basic health insurance program.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0340 How does an adoptive parent apply for the adoption support reconsideration program? ~~((To apply:))~~ The adoptive parent must complete an application for adoption support reconsideration and attach:

- (1) A written cost estimate of the child's proposed corrective-rehabilitative services;
- (2) A current medical evaluation of the child including the cause(s) of the condition requiring corrective-rehabilitative services;
- (3) A written statement explaining the child's current medical and counseling needs;
- (4) A written statement giving the department permission to request and review pre-adoption information held by the adoption agency facilitating the child's adoption; and
- (5) A copy of the adoptive parents' most recently filed ~~((IRS 1040))~~ federal income tax ~~((form))~~ return.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0365 Does an adoptive parent have the right to appeal department decisions regarding adoption support issues? (1) An adoptive parent has the right to an administrative hearing to contest the following department actions:

- (a) Denial of a child's initial eligibility for the adoption support program or the adoption support reconsideration program;
- (b) Failure to respond with reasonable promptness to a written application or request for services;
- (c) Denial of a written request to modify the level of payment or service in the agreement;
- (d) ~~((A decision to increase or decrease the level of the child's adoption support payments without the concurrence of the adoptive parent(s)))~~ Delay of more than thirty days when responding to a written request for modification of the agreement;
- (e) Denial of a request for nonrecurring adoption expenses; ~~((or))~~
- (f) Suspension of adoption support benefits; or
- (g) Termination from the program.

(2) ~~To initiate the appeal,~~ the adoptive parent must submit a request for an administrative hearing to the office of administrative hearings within ninety days of receipt of the department's decision to deny a request, to suspend or terminate adoption support, or failure to respond to a request.

(3) The office of administrative hearings must apply the rules in WAC 388-27-0120 through 388-27-0390 as they pertain to the issues being contested.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0370 What information about adoption support agreements may be used in an administrative hearing? Adoption and adoption support files are confidential, and information contained in those files may not be disclosed without the consent of the person who is the subject of

the file. By requesting an administrative hearing to challenge a department decision relating to adoption support the adoptive parent is agreeing that the department may release factual information about the case during the course of the proceedings. Actions taken by the department and decisions by administrative law judges or review judges in adoption support cases which do not directly involve the case being heard may not be cited or relied ~~((upon))~~ on in any administrative proceeding (RCW 26.33.340 and 74.04.060).

AMENDATORY SECTION (Amending WSR 03-02-059, filed 12/27/02, effective 1/27/03)

WAC 388-27-0375 Will the department reimburse an adoptive parent for nonrecurring adoption expenses? The department ~~((will))~~ has authority to agree to reimburse some or all of an adoptive parent's nonrecurring adoption expenses if:

- (1) The child has a qualifying factor or condition identified in WAC 388-27-0140(1);
- (2) Washington state has determined that the child cannot or should not be returned to the home of the child's biological parent; ~~((and))~~
- (3) Except where it would be against the best interest of the child, the department or a public or private nonprofit child placing agency has made a reasonable but unsuccessful effort to place the child with appropriate adoptive parents without the benefit of adoption assistance; and
- (4) The child has been placed for adoption according to applicable state ~~((and local laws))~~ or tribal laws.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0380 What types of nonrecurring adoption expenses will the department reimburse? The department may reimburse:

- (1) Court costs directly related to finalizing an adoption;
- (2) Reasonable and necessary adoption fees;
- (3) Reasonable and necessary attorney fees directly related to finalizing an adoption; and
- (4) Costs associated with an adoption home study, including:
 - (a) Health and psychological examinations;
 - (b) Placement supervision before adoption;
 - (c) Transportation, lodging, and food costs incurred by the adoptive parent(s) and child during pre-placement visits; and
 - (d) Other costs directly related to finalizing the legal adoption of the child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0385 Is there a limit to the amount of nonrecurring adoption expenses that the department will reimburse? ~~((Department))~~ Reimbursement by the department of nonrecurring adoption expenses must not exceed one thousand five hundred dollars per child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0390 How does an adoptive parent get reimbursed for nonrecurring adoption expenses? (1) Before the adoption is finalized, the adoptive parent must sign an agreement with the department specifying the nature and amount of nonrecurring adoption expenses. This agreement may be part of an adoption support agreement or it may be a separate agreement specific to the reimbursement for nonrecurring adoption finalization costs. The department will make no reimbursement payments unless such an agreement exists.

(2) (~~Upon~~) After finalization of the adoption, the adoptive parent may request reimbursement. A copy of the adoption decree and documentation supporting actual costs incurred must accompany the request for reimbursement.

(3) The department must reimburse documented actual costs or the amount specified in the signed agreement, whichever is less.

(4) The department will not reimburse nonrecurring adoption expenses that are reimbursable from other sources (for example: (~~IRS, military, or the~~)) adoptive parent's employer).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-27-0195 May the adoptive parent(s) change the benefits contained in the adoption support program?
- WAC 388-27-0230 How does the department evaluate a request for adoption support monthly cash payments?
- WAC 388-27-0275 When does the department review an adoption support agreement?
- WAC 388-27-0280 What is involved in the review process?
- WAC 388-27-0285 What is the department's responsibility when the adoptive parent(s) requests a review of the adoption support agreement?
- WAC 388-27-0290 What if the department does not respond to a request for a review of an adoption support agreement within thirty days?
- WAC 388-27-0300 After a review, what if the department and the adoptive parent cannot agree on the terms of the adoption support agreement?

WSR 18-14-013 PERMANENT RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 18-131—Filed June 22, 2018, 5:57 p.m., effective July 23, 2018]

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

Purpose: Amend rules for commercial salmon fishing in Puget Sound, including WAC 220-354-120 Purse seine—Open periods, 220-354-160 Gillnet—Open periods, 220-354-180 Reef net—Open periods, and 220-354-210 Beach seine—Open periods.

Citation of Rules Affected by this Order: Amending WAC 220-354-120, 220-354-160, 220-354-180, and 220-354-210.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 18-06-091 on March 6, 2018.

Changes Other than Editing from Proposed to Adopted Version: This summarizes changes from CR-102 that was filed as WSR 18-06-091. Changes were made based on negotiations with Puget Sound treaty Indian tribes informed by input from constituents. Specific changes are reflected below.

Puget Sound salmon closed areas WAC 220-354-080 was removed from the rule change proposed in WSR 18-06-091. This change was filed on May 2, 2018, as WSR 18-11-003. The intent of removing this from the North of Falcon rule-making process was to make housekeeping related changes to the rule; these changes add latitude and longitude coordinates to the geographic points defining the commercial salmon catch reporting areas in Puget Sound.

Changes in Puget Sound commercial salmon fishing open periods regulated in WAC 220-354-120 and 220-354-160 include shifting of openings within specific weeks as well as the removal of some opening during certain weeks or shifting between weeks. These changes were made to address harvest allocation and sharing between Puget Sound treaty Indians and the all citizens fisheries managed by the Washington department of fish and wildlife and to ensure that conservation objectives are achieved.

These changes are summarized below. Additional detail for specific changes can be found in the concise explanatory statement (CES) associated with this rule-making. For example, amendments to the open periods in areas 6D, 7 and 7A fisheries are addressed on page 10 of the CES.

For purse seine open periods, WAC 220-354-120, changes include:

Areas 7 and 7A:

Removed four days of chum fishery based on agreement with co-managers. (*closed 10/10, 10/13, 10/16, 10/17*).

Area 8D:

Amend open days to align with openings for chum in other areas. (*10/16 to 10/18 and 10/30 to 10/31*).

Removal of one day of fishing in week 43. (*10/24*)

Areas 10 and 11:

Amend opening date in weeks 42 and 44. (*10/16 to 10/18 and 10/30 to 10/31 respectively*)

Remove one open day each week in weeks 43, 46, and 47. (10/24, 11/13, 11/19)

Areas 12 and 12B chum:

Amend opening date in weeks 42 and 44. (10/16 to 10/18 and 10/30 to 10/31 respectively)

Removal of one day of fishing in week 43. (10/24)

Area 12C chum:

Addition of day scheduled in week 48. (11/27)

For gillnet open periods, WAC 220-354-160, changes include:

Area 6D:

Amend open days in week 39 to allow two consecutive days of fishing. (9/24 to 9/22)

Areas 7 and 7A:

Removed four days of chum fishery based on agreement with co-managers. (closed 10/10, 10/13, 10/16, 10/17)

Area 8D:

Correcting dates to add nightly opening per fishing pattern. (10/4)

Areas 10 and 11:

Removal of one day of fishing in week 42. (10/14)

Amend open dates in weeks 42 and 44. (10/17 to 10/16 and 10/31 to 11/1 respectively)

Amend hours scheduled in week 43. (10/23 changed close time from 7AM to 9AM)

Removal open dates in weeks 46 and 47. (11/11, 11/14, 11/20, 11/21)

Areas 12 and 12B chum:

Removal of one day of fishing in week 42. (10/14)

Amend open dates in weeks 42 and 44. (10/17 to 10/16 and 10/31 to 11/1 respectively)

Area 12C chum:

Addition of day scheduled in week 48. (11/26)

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

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

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

Date Adopted: June 22, 2018.

Joe Stohr
Director

AMENDATORY SECTION (Amending WSR 17-17-100, filed 8/18/17, effective 9/18/17)

WAC 220-354-120 Puget Sound salmon—Purse seine—Open periods. (1) It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	<u>7AM - 7PM</u>	= 10/11, 10/12
	7AM - 6PM	- ((10/10, 10/11,)) 10/14, 10/15, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3(11/4)
	7AM - 5PM	- 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10(11/11)
Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-354-100 (7)(a) through (f).		
7B, 7C:	6AM - 8PM	- ((8/16, 8/23, 8/30, 9/6) 8/15, 8/22, 8/29, 9/5)
	7AM - 7PM	- ((9/11, 9/13, 9/15) 9/10, 9/12, 9/14)
7B:	7AM - 7PM	- ((9/18, 9/20, 9/22) 9/17, 9/19, 9/21)
	7AM ((9/24) 9/23)	- 6PM ((11/4) 11/3)
	7AM ((11/6) 11/5)	- 4PM ((11/10) 11/9)
	7AM ((11/13) 11/12)	- 4PM ((11/17) 11/16)
	7AM ((11/20) 11/19)	- 4PM ((11/24) 11/23)
	7AM ((11/27) 11/26)	- 4PM 11/30
	7AM ((12/4) 12/3)	- 4PM ((12/8) 12/7)

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

8:	Closed	
8A:	((Closed)) 7AM - 7PM	= <u>Limited participation - Two boats 9/17, 9/24</u>
8D:	7AM - 7PM	- ((9/19, 9/26, 10/3, 10/10) 9/24, 10/1, 10/8)
	7AM - 6PM	- 10/18, ((10/24, 10/30) 10/22, 10/31)

AREA	TIME	DATE	AREA	TIME	DATE
	7AM - 5PM	- ((11/7, 11/9) <u>11/5, 11/7, 11/13, ((11/21, 11/29) 11/19, 11/26</u>)			
(10:	7AM - 7PM	- Limited participation - 5 boats 8/23, 8/29, 8/31, 9/5, 9/7)			Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-354-100 (7)(a) through (f).
10, 11:	7AM - 6PM	- ((10/18, 10/24, 10/30) <u>10/18, 10/22, 10/31</u>)			(2) It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:
	7AM - 5PM	- ((11/7, 11/9, 11/13, 11/21) <u>11/5, 11/7</u>)			(a) Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.
12, 12B:	7AM - 6PM	- 10/18, ((10/24, 10/30) <u>10/22, 10/31</u>)			(b) Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September 1 in Area 7B.
	7AM - 5PM	- ((11/7, 11/9) <u>11/5, 11/7, 11/13, 11/19, 11/21</u>)			(c) Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.
12C:	7AM - 5PM	- ((11/7, 11/9) <u>11/5, 11/7, 11/13, ((11/21) 11/19, 11/27</u>)			(d) All other saltwater and freshwater areas - Closed ((for all species at all times)).

AMENDATORY SECTION (Amending WSR 17-17-100, filed 8/18/17, effective 9/18/17)

WAC 220-354-160 Puget Sound salmon—Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC 220-350-170 and lawful gear description WAC 220-354-140.	7AM - 7PM	9/21, 9/22, 9/25, 9/26, 9/27, 9/28, ((9/29) <u>10/1, 10/2, 10/3, 10/4, 10/5, ((10/6) 10/8, 10/9, 10/10, 10/11, 10/12, ((10/13) 10/15, 10/16, 10/17, 10/18, 10/19, ((10/20) 10/22, 10/23, 10/24, 10/25, 10/26((10/27)</u>)	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM	- Midnight; use of recovery box required	((10/10)) 10/11, <u>10/12, 10/14, 10/15, 10/18, 10/19, 10/20((10/21)</u>)	6 1/4"
	7AM	- Midnight	<u>10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, ((11/11)</u>)	6 1/4"

Note: In Areas 7 and 7A after October 9 and prior to October ((~~23~~) 20), coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-354-140 (5)(a) through (f) when coho and Chinook release is required.

7B, 7C:	7PM	- 8AM	NIGHTLY <u>8/12, 8/13, 8/14, ((8/15) 8/19, 8/20, 8/21, 8/22, ((8/23) 8/26, 8/27, 8/28, 8/29((8/30)</u>)	7"
	7AM ((9/3) <u>9/2</u>)	- 7AM ((9/8) <u>9/7</u>)		5"
	7AM ((9/10) <u>9/9</u>)	- 7AM ((9/15) <u>9/14</u>)		5"
7B:	7AM ((9/17) <u>9/16</u>)	- 7AM ((9/22) <u>9/21</u>)		5"
	7AM ((9/24) <u>9/23</u>)	- Midnight 11/4		5"
	7AM ((11/6) <u>11/5</u>)	- 4PM ((11/10) <u>11/9</u>)		6 1/4"

AREA	TIME		DATE(S)	MINIMUM MESH
	6AM ((11/13)) <u>11/12</u>	-	4PM ((11/17)) <u>11/16</u>	6 1/4"
	6AM ((11/20)) <u>11/14</u>	-	4PM ((11/24)) <u>11/23</u>	6 1/4"
	7AM ((11/27)) <u>11/26</u>	-	4PM 11/30	6 1/4"
	7AM ((12/4)) <u>12/3</u>	-	4PM ((12/8)) <u>12/7</u>	

Note: In Area 7C the minimum mesh size is 7" through ~~((9/15))~~ 9/14.

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	5AM	-	11PM	Closed	5"
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Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	6PM	-	8AM	((Closed)) <u>Limited participation; 2 boats only 9/19</u>	<u>5"</u>
	<u>6PM</u>	-	<u>8AM</u>	<u>9/25, 9/27</u>	<u>5"</u>

Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8D:	((6AM	-	10PM	9/19	5"
	<u>6AM 9/21</u>	-	<u>10PM 9/22</u>		5"
	7AM	-	9PM	9/26, 10/3, 10/10	5"
	<u>7AM 9/28</u>	-	<u>9PM 9/29</u>		5"
	<u>7AM 10/5</u>	-	<u>9PM 10/6</u>		5"
	<u>7AM 10/12</u>	-	<u>9PM 10/13</u>		5"
	7AM	-	8PM	10/17, 10/24	5"
	<u>7AM 10/19</u>	-	<u>8PM 10/20</u>		5"
	<u>7AM 10/26</u>	-	<u>8PM 10/27</u>		5"
	7AM	-	7PM	10/31	5"
	<u>7AM 11/2</u>	-	<u>7PM 11/3</u>		5"
	6AM	-	6PM	11/7	5"
	<u>6AM 11/9</u>	-	<u>6PM 11/10</u>		5"))
	<u>6PM</u>	-	<u>8AM</u>	<u>Nightly 9/23, 9/27, 9/30, 10/4, 10/7, 10/11</u>	<u>5"</u>
	<u>6PM 9/24</u>	-	<u>8AM 9/27</u>		<u>5"</u>
	<u>6PM 10/1</u>	-	<u>8AM 10/4</u>		<u>5"</u>
	<u>6PM 10/8</u>	-	<u>8AM 10/11</u>		<u>5"</u>
	<u>5PM</u>	-	<u>9AM</u>	<u>10/14, 10/18, 10/21, 10/25, 10/28, 11/1</u>	<u>5"</u>
	<u>5/PM 10/15</u>	-	<u>9AM 10/18</u>		<u>5"</u>
	<u>5PM 10/22</u>	-	<u>9AM 10/25</u>		<u>5"</u>
	<u>5PM 10/29</u>	-	<u>9AM 11/1</u>		<u>5"</u>
	<u>4PM</u>	-	<u>9AM</u>	<u>11/4, 11/8</u>	<u>5"</u>
	<u>4PM 11/5</u>	-	<u>9AM 11/8</u>		<u>5"</u>
	6AM	-	6PM	<u>11/14, 11/15, 11/16, ((11/17)) 11/21, 11/22, 11/23(((11/24)))</u>	6 1/4"
	7AM	-	6PM	<u>11/28, 11/29, 11/30(((12/4)))</u>	6 1/4"
9A: Skiff gillnet only, definition WAC 220-350-170 and lawful gear description WAC 220-354-140.	7AM ((8/21)) <u>8/19</u>	-	7PM ((11/4)) <u>11/3</u>		5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

AREA	TIME		DATE(S)	MINIMUM MESH
10:	7PM	-	7AM ((Limited participation—5 boats 8/22, 8/28, 8/30, 9/5, 9/7)) <u>Closed</u>	4 1/2" minimum and 5 1/2" maximum
Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 90 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-354-140 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.				
10, 11:	5PM	-	9AM NIGHTLY ((10/19, 10/22)) <u>10/16, 10/23, 10/25,</u> ((10/31, 11/2)) <u>10/28, 11/1</u>	6 1/4"
	4PM	-	8AM ((11/5, 11/14, 11/16, 11/19, 11/22)) <u>11/8</u>	6 1/4"
	4PM	-	7AM NIGHTLY ((11/8)) <u>11/6</u>	6 1/4"
12A: Skiff gillnet only, definition WAC 220-350-170 and lawful gear description WAC 220-354-140.	7AM	-	7PM Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"
Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.				
12, 12B:	7AM	-	8PM ((10/19,)) <u>10/16, 10/23, 10/25</u>	6 1/4"
	7AM	-	7PM ((10/31, 11/2)) <u>10/29, 11/1</u>	6 1/4"
	6AM	-	6PM 11/6, 11/8, <u>11/12</u> , 11/14, ((11/16,)) 11/20(((11/22)))	6 1/4"
12C:	6AM	-	6PM 11/6, 11/8, <u>11/12</u> , 11/14, ((11/16,)) 11/20, ((11/22)) <u>11/21</u>	6 1/4"
	7AM	-	6PM ((11/28, 11/30)) <u>11/26</u>	6 1/4"

All other saltwater and freshwater areas - Closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

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 17-17-100, filed 8/18/17, effective 9/18/17)

WAC 220-354-180 Puget Sound salmon—Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7	5AM - 9PM Daily	((9/17 - 11/17)) <u>9/23 - 11/10</u>

(2) It is unlawful at all times to retain unmarked Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or unmarked coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in the logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091.

(4) All other saltwater and freshwater areas - Closed.

AMENDATORY SECTION (Amending WSR 17-17-100, filed 8/18/17, effective 9/18/17)

WAC 220-354-210 Puget Sound salmon—Beach seine—Open periods. (1) It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
12A:	7AM - 7PM	8/21, 8/22, 8/23, 8/24, ((8/25)) <u>8/27,</u> 8/28, 8/29, 8/30, 8/31, ((9/1, 9/2)) <u>9/3,</u> <u>9/4, 9/5, 9/6, 9/7, ((9/8)) 9/10, 9/11,</u> 9/12, 9/13, 9/14, ((9/15)) <u>9/17, 9/18,</u> 9/19, 9/20, 9/21, ((9/22)) <u>9/24, 9/25,</u> 9/26, 9/27, 9/28, ((9/29)) <u>10/1, 10/2,</u> <u>10/3, 10/4, 10/5</u>

AREA	TIME	DATE(S)
12C, Hoodsport Hatchery Zone:	7AM - 7PM	((7/31, 8/2, 8/7, 8/9, 8/14, 8/16, 8/21, 8/23, 8/28, 8/30, 9/4, 9/6)) 7/30, 8/1, 8/6, 8/8, 8/13, 8/15, 8/20, 8/22, 8/27, 8/29, 9/3, 9/5
		November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

(2) It is unlawful to retain the following salmon species taken with beach seine gear within the following areas during the following periods:

- (a) Chinook salmon - At all times in Area 12A.
- (b) Chum salmon - In all areas prior to October 10.

WSR 18-14-016
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed June 25, 2018, 2:57 p.m., effective July 26, 2018]

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

Purpose: Chapter 246-827A WAC, Forensic phlebotomist (new), the department of health (department) has adopted a new chapter of rules to establish minimum credentialing standards for those persons interested in obtaining the new department-issued forensic phlebotomist credential. These new rules will apply to forensic phlebotomists and will not apply to medical assistants, whose administrative rules are under chapter 246-827 WAC. The adopted rules establish training requirements, fees, and other general administrative and credentialing processes for the new forensic phlebotomist credential per E2SHB 1614 of 2017 that amended chapter 18.360 RCW. Under the provisions of the statute, only authorized law enforcement officers or correction facility personnel may apply to obtain the forensic phlebotomist credential.

Citation of Rules Affected by this Order: New WAC 246-827A-0005, 246-827A-0010, 246-827A-0020, 246-827A-0030, 246-827A-0040, 246-827A-0050, 246-827A-0060, 246-827A-0070, 246-827A-0080, 246-827A-0090, and 246-827A-990.

Statutory Authority for Adoption: Chapter 18.360 RCW, RCW 18.360.070, and 43.70.040.

Other Authority: Chapter 18.360 RCW as amended by E2SHB 1614 (sections 14-17, chapter 336, Laws of 2017).

Adopted under notice filed as WSR 18-08-086 on April 4, 2018.

Changes Other than Editing from Proposed to Adopted Version: The definition of "person" was removed from the definitions section under WAC 246-827A-0010. "Person" was defined as the individual from whom a blood sample is drawn. However, throughout the text of the rule, "person" is used to refer to the forensic phlebotomist credential holder, the applicant, and the person from whom the blood is drawn. It is clear in each instance that the word "person" is used, which individual is being referred to. Therefore, the definition was removed to avoid any ambiguity or confusion that the definition may have caused.

A final cost-benefit analysis is available by contacting Brett Cain, P.O. Box 47852, Olympia, WA 98501, phone 360-236-4766, fax 236-236-2901, TTY 360-833-6388 or 711, email brett.cain@doh.wa.gov, web site www.doh.wa.gov/medicalassistant.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 11, Amended 0, Repealed 0.

Date Adopted: June 22, 2018.

John Wiesman, DrPH, MPH
Secretary

Chapter 246-827A WAC

FORENSIC PHLEBOTOMISTS

NEW SECTION

WAC 246-827A-0005 Purpose. This chapter establishes training, credentialing, and renewal requirements for the forensic phlebotomist certification, and regulates the practice of forensic phlebotomy by a person who holds a forensic phlebotomist certification. A forensic blood draw performed by a person credentialed as a medical assistant-certified or a medical assistant-phlebotomist is governed by chapter 246-827 WAC. These rules do not establish or alter the standards for admissibility of evidence in criminal proceedings.

NEW SECTION

WAC 246-827A-0010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Correctional facility" as defined in RCW 70.48.020, means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

(2) "Department" means the Washington state department of health.

(3) "Detention facility" as defined in RCW 70.48.020, means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes

of punishment and correction after sentencing or persons serving terms not to exceed ninety days.

(4) "Direct visual supervision" means the supervising health care practitioner is physically present and within visual range of the trainee.

(5) "Forensic phlebotomist" means a police officer, law enforcement officer, or employee of a correctional facility or detention facility, who is certified under chapter 18.360 RCW and meets any additional training and proficiency standards of his or her employer to collect a venous blood sample for forensic testing pursuant to a search warrant, a waiver of the warrant requirement, or exigent circumstances.

(6) "Law enforcement officer" or "police officer" as defined in RCW 10.93.020, means a general authority, limited authority, specially commissioned, or federal peace officer.

(7) "Peace officer certification" means a certification issued by the criminal justice training commission under chapter 43.101 RCW.

(8) "Secretary" means the secretary of the department of health or the secretary's designee.

(9) "Venipuncture" means accessing a person's vein to collect a blood sample.

NEW SECTION

WAC 246-827A-0020 General standards. (1) The forensic phlebotomist must have knowledge and understanding of the laws and rules regulating the forensic phlebotomist, including chapter 18.130 RCW, Regulation of health professions—Uniform Disciplinary Act.

(2) The forensic phlebotomist must function within his or her scope of practice.

(3) The forensic phlebotomist must demonstrate competency before performing new or unfamiliar duties which are in his or her scope of practice.

(4) The forensic phlebotomist must comply with all applicable state and federal laws regarding privacy of criminal records.

(5) The forensic phlebotomist must comply with any initial and ongoing training and proficiency standards of his or her employer as required in RCW 18.360.010.

NEW SECTION

WAC 246-827A-0030 Training. An applicant for a forensic phlebotomist certification must successfully complete a forensic phlebotomist training program.

(1) Forensic phlebotomist training programs must align with the standards described in RCW 18.360.030.

(2) For the purposes of this section, "clinical setting" means an environment that allows venipunctures and venipuncture training that are conducted in a safe and sterile manner.

(3) An approved program must be:

(a) A forensic phlebotomy program through a postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education; or

(b) A forensic phlebotomy training program administered by a health care practitioner, as defined under RCW

18.360.010, whose scope of practice includes venipuncture, and who is responsible for determining the content of the training and for ascertaining the proficiency of the trainee. The phlebotomy training program must include the following:

(i) Training to include evaluation and assessment of knowledge and skills to determine entry level competency in the following areas:

(A) Performing a venipuncture;

(B) Employing agency standards for ethics, confidentiality, and use of force as they relate to performing a forensic blood draw;

(C) Recognizing:

(I) Symptoms of a medical emergency and appropriate first aid; and

(II) Persons who are not medically able to undergo a venipuncture.

(D) Materials to be used;

(E) Anatomic considerations for performing venipuncture;

(F) Procedural standards and techniques for venipuncture;

(G) Common medical terminology and practices related to forensic blood draws;

(H) Physical layout of the blood draw scene; and

(I) Safety requirements including infection prevention and control, dealing with a person who has an infectious disease, and the handling and disposal of biohazardous materials.

(ii) Direct visual supervision by a health care practitioner, a certified forensic phlebotomist, or a delegated and certified medical assistant-phlebotomist to the trainee to ensure competency in the following:

(A) Practice technique in a simulated situation;

(B) Observation of performing procedures on patients until the trainee demonstrates proficiency to be certified at the minimum entry level of competency. The trainee must have adequate physical ability, including sufficient manual dexterity to perform the requisite health care services.

(iii) Documentation of all forensic blood draw training signed by the supervising health care practitioner and the trainee, and placed in the trainee's personnel file.

(c) Training programs that meet the requirements described in this subsection are approved by the secretary.

NEW SECTION

WAC 246-827A-0040 Application requirements. An applicant for a forensic phlebotomist credential must submit the following to the department:

(1) Completed application on forms provided by the department;

(2) Proof of successful completion of the required education or approved training program described under WAC 246-827A-0030;

(3) Proof of completing seven clock hours of HIV/AIDS education as required by chapter 246-12 WAC, Part 8;

(4) Proof of current employment as a law enforcement or police officer, or current employment at a detention or correction facility;

- (5) Any fee required in WAC 246-827A-900;
- (6) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department; and
- (7) Any additional documentation or information requested by the department.

NEW SECTION

WAC 246-827A-0050 Credential invalidation. (1) The forensic phlebotomist credential is no longer valid when:

- (a) The forensic phlebotomist's peace officer, limited authority, specially commissioned, or federal peace officer certification is revoked or expires; or
 - (b) An employee of a detention or correctional facility is no longer employed by a detention or correctional facility.
- (2) The forensic phlebotomist must notify the department within thirty days of the forensic phlebotomist's:
- (a) Peace officer, limited authority, specially commissioned, or federal peace officer certification being revoked or expired; or
 - (b) Last day of employment by a detention or correctional facility.

NEW SECTION

WAC 246-827A-0060 Expired credential reissuance. (1) A person holding an expired forensic phlebotomist credential may not practice until the credential is returned to active status.

(2) If the forensic phlebotomist credential has expired for less than three years, he or she must meet the requirements of chapter 246-12 WAC, Part 2.

(3) If the forensic phlebotomist credential has been expired for three years or more, and he or she is currently practicing as a forensic phlebotomist in another state or U.S. jurisdiction, he or she must:

- (a) Meet the requirements of chapter 246-12 WAC, Part 2; and
- (b) Provide verification of a current unrestricted active forensic phlebotomist credential in another state or U.S. jurisdiction that is substantially equivalent to the qualifications for his or her credential in the state of Washington.

(4) If the forensic phlebotomist credential has been expired for three years or more and the person does not meet the requirements of subsection (3) of this section, he or she must comply with chapter 246-12 WAC, Part 2, and demonstrate competence by completing a forensic phlebotomist program described under WAC 246-827A-0030 within six months prior to applying for reactivation.

NEW SECTION

WAC 246-827A-0070 Conditions for performing forensic phlebotomy. As required in RCW 46.61.506:

(1) The performance of the venipuncture must not interfere with the provision of essential medical care; the blood sample must be collected using sterile equipment; and the skin area of puncture must be thoroughly cleaned and disinfected;

- (2) The person whose blood is collected must be seated, reclined, or lying down; and
- (3) If taken at the scene, the blood sample must be performed in an ambulance or aid service vehicle licensed by the department of health under chapter 18.73 RCW.

NEW SECTION

WAC 246-827A-0080 Mandatory reporting. Mandatory reporting laws under chapter 246-16 WAC apply to a person who holds a forensic phlebotomist credential.

NEW SECTION

WAC 246-827A-0090 Military training. An applicant with relevant military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state.

NEW SECTION

WAC 246-827A-990 Fees. (1) Credentials must be renewed every two years on the credential holder's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for a forensic phlebotomist certification:

Title of Fee	Fee
Initial credential	\$145.00
Renewal	\$145.00
Late renewal penalty	\$75.00
Expired credential reissuance	\$55.00
Verification of credential	\$25.00
Duplicate credential	\$10.00

WSR 18-14-023
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 26, 2018, 7:00 a.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The stumpage value rule is required by statute (RCW 84.33.091) to be effective on July 1, 2018.

Purpose: WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the second half of 2018.

Citation of Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 84.33.096.

Adopted under notice filed as WSR 18-10-102 on May 2, 2018.

A final cost-benefit analysis is available by contacting Brenton M. Madison, P.O. Box 47453, Olympia, WA 98504-

7453, phone 360-534-1583, fax 360-534-1606, TTY 1-800-451-7985, email BrentonM@dor.wa.gov, web site dor.wa.gov.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 26, 2018.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-02-058, filed 12/29/17, effective 1/1/18)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((January)) July 1, 2018 through ((June 30)) December 31, 2018:

**Washington State Department of Revenue
STUMPAGE VALUE TABLE**

((January)) July 1 through ((June 30)) December 31, 2018

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
Starting July 1, 2012, there are no separate Quality Codes per Species Code.

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
((Douglas-fir ⁽²⁾	DF	1	\$448	\$441	\$434	\$427	\$420
		2	481	474	467	460	453
		3	478	471	464	457	450
		4	533	526	519	512	505
		5	473	466	459	452	445
		6	283	276	269	262	255
Western-Hemlock and Other Conifer ⁽³⁾	WH	1	296	289	282	275	268
		2	374	367	360	353	346
		3	362	355	348	341	334
		4	358	351	344	337	330
		5	331	324	317	310	303
Western-Redcedar ⁽⁴⁾	RC	1-5	1161	1154	1147	1140	1133
		6	1229	1222	1215	1208	1201

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Ponderosa-Pine ⁽⁵⁾	PP	1-6	196	189	182	175	168
Red-Alder	RA	1-5	547	540	533	526	519
Black-Cottonwood	BC	1-5	117	110	103	96	89
Other Hardwood	OH	1-5	326	319	312	305	298
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	741	734	727	720	713
Western-Redcedar Poles	RCL	1-5	1499	1492	1485	1478	1471
		6	1449	1442	1435	1428	1421
Chipwood ⁽⁶⁾	CHW	1-5	9	8	7	6	5
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	29	28	27	26	25
RC Shake & Shingle-Blocks ⁽⁷⁾	RCS	1-6	299	292	285	278	271
Posts ⁽⁸⁾	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF-Christmas Trees ⁽⁹⁾	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-6	0.50	0.50	0.50	0.50	0.50))
Douglas-fir ⁽²⁾	DF	1	\$545	\$538	\$531	\$524	\$517
		2	550	543	536	529	522
		3	553	546	539	532	525
		4	616	609	602	595	588
		5	657	650	643	636	629
		6	306	299	292	285	278
Western Hemlock and Other Conifer ⁽³⁾	WH	1	395	388	381	374	367
		2	429	422	415	408	401
		3	350	343	336	329	322
		4	401	394	387	380	373
		5	510	503	496	489	482
Western-Redcedar ⁽⁴⁾	RC	1-5	1314	1307	1300	1293	1286
		6	1302	1295	1288	1281	1274
Ponderosa-Pine ⁽⁵⁾	PP	1-6	211	204	197	190	183
Red Alder	RA	1-5	626	619	612	605	598
Black Cottonwood	BC	1-5	112	105	98	91	84
Other Hardwood	OH	1-5	340	333	326	319	312
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	841	834	827	820	813
Western-Redcedar Poles	RCL	1-5	1549	1542	1535	1528	1521
		6	1484	1477	1470	1463	1456
Chipwood ⁽⁶⁾	CHW	1-5	13	12	11	10	9
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	28	27	26	25	24

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
RC Shake & Shingle Blocks(7)	RCS	1-6	299	292	285	278	271
Posts(8)	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees(9)	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(9)	TFX	1-6	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine in SVA 6, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine in SVA 6, and all Pines in SVA 1-5.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.
- (9) Stumpage Value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

- (a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.
- (b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.
- (c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.
- (d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.
- (e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((January)) July 1 through ((June 30)) December 31, 2018:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, and 5
 ((January)) July 1 through ((June 30)) December 31, 2018

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Area 6
 ((January)) July 1 through ((June 30)) December 31, 2018

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

**WSR 18-14-024
PERMANENT RULES
BOARD OF**

PILOTAGE COMMISSIONERS

[Filed June 26, 2018, 8:04 a.m., effective July 27, 2018]

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

Purpose: The purpose of modifying this rule is to update the pilot exam qualifications to include a sea service category for articulated tug barges based on feedback from industry stakeholders, and to clarify language for aspirant ease in determining exam eligibility.

Citation of Rules Affected by this Order: Amending WAC 363-116-0751.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Adopted under notice filed as WSR 18-10-061 on April 30, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 21, 2018.

Jaimie C. Bever
Executive Director

AMENDATORY SECTION (Amending WSR 12-05-064, filed 2/15/12, effective 3/17/12)

WAC 363-116-0751 Qualifications for pilot applicants. (1) Sea service.

(a) In addition to meeting the preexamination requirements of RCW 88.16.090, pilot applicants must, before taking the examination provided in WAC 363-116-076, meet

one of the following indicated service requirements as master, while holding a minimum license as mate/master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC):

Vessel Type	Minimum Size	Waters	Minimum Time
Cargo or tank	5000 GRT or 10,000 GT (ITC)	Ocean or near coastal	1 year as <u>master</u>
Cargo or tank	700 GRT or 1400 GT (ITC)	Ocean or near coastal	2 years as <u>mas-ter</u>
Cargo or tank	1600 GRT or 3000 GT (ITC)	Inland	2 years as <u>mas-ter</u>
Passenger or ferry	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as <u>mas-ter</u>
Towing	150 GRT or 300 GT (ITC)	Ocean, near coastal or inland	2 years as <u>mas-ter</u>
Articulated tug barge (ATB)	Combined 10,000 GRT (ITC)	Ocean or near coastal	4 years sailing as a <u>mate/mas-ter with a mini-mum of 1 year as master</u>
U.S. Flag gov-ernment	3000 displace-ment tons	Ocean, near coastal or inland	2 years as <u>com-manding offi-cer or master</u>
Special purpose	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as <u>mas-ter</u>

Other	Minimum Size	Waters	Minimum Time
Professional <u>pilot association</u> or <u>government employed pilot</u>	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	3 years as <u>pilot</u>

(b) In calculating sea service under subsection (1) of this section, a year of service shall equal three hundred sixty days of service on the vessel in the required capacity. Pilot applicants combining the above types of sea service shall have a total of at least two years of the various service times, except that one day of service as master on cargo, tank, or passenger vessels of at least 5000 GRT or 10,000 GT (ITC) shall be credited as two days of service time for the purpose of calculating such combined service times.

(2) In lieu of the requirements of subsection (1) of this section, a pilot applicant may substitute either:

(a) Three years of service as an active member of an organized professional pilot association or as a government employed pilot during which periods the pilot applicant was actively engaged in piloting and docking vessels while holding a minimum license as a master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters. For purposes of this section, piloting shall refer to piloting vessels in the capacity of the pilot in charge of navigation with no other responsibilities (either when piloting or not piloting) as a member of the ship's crew; or

(b) Two years of service as a commanding officer or master of U.S. flag government vessels of not less than 3000 displacement tons. The pilot applicant must hold at the time of application a minimum license as master of steam or motor

vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters; or

(c) Two years of service as master of special purpose vessels of not less than 1600 GRT or 3000 GT (ITC) while holding a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC), provided that the sea time making up the sea service was spent in charge of a vessel that can be documented to have been underway and to have required the type of ship-handling, navigation and leadership skills that the board finds necessary to provide the experience needed to become a pilot. Evaluation of service time on special purpose vessels shall be made by the board on a case-by-case basis and shall not be approved unless the board finds the service to be the substantial equivalent of the sea service required in subsection (1)(a) and (b) of this section or (a) and (b) of this subsection (2). The determination of the board as to the suitability of service as master of a special purpose vessel will be final.

(3) As used in this section these terms shall have the following meanings:

(a) Cargo or tank vessels shall refer to vessels primarily engaged in the transportation of cargo between points.

(b) Passenger vessels shall refer to vessels primarily engaged in the transportation of passengers between points. This shall include yachts only to the extent and for such times that such vessels are actively engaged in moving passengers between points.

(c) Ferry vessels shall refer to vessels primarily engaged in the transportation of vehicles and passengers between points.

(d) Towing vessels shall refer to vessels primarily engaged in commercial towing of vessels or in ship assist work.

(e) GRT shall refer to gross register tonnage (domestic).

(f) GT (ITC) shall refer to gross tonnage measured in accordance with the requirements of the *1969 International Convention on Tonnage Measurement of Ships*.

(g) Master shall refer to the person of master's rank on the vessel's station bill or muster list or other such document who, in the event of an emergency or the sounding of a general alarm, is required to be on the bridge and in charge. If there is no such designation, the term master shall refer to the person of master's rank and pay who is ultimately in charge of the navigation of the vessel as reflected in the vessel's official log book, or there being no official log book, the bridge log of the vessel.

(h) Mate shall refer to the person of mate's rank (third mate, second mate, chief mate or simply mate) whose duties include regular bridge watchkeeping.

(4) It will be the responsibility of the pilot applicant to provide adequate documentation to enable the board to set forth and verify sea service in the manner specified in the board's application form.

The board will not provide applicants with a final determination verifying service until it receives an application form. An applicant will not get official notification of whether he/she qualifies to sit for the examination until the board reviews a formal application. In the event an applicant is working on a vessel other than one of the five specified in subsection (1)(a) of this section, e.g., a special purpose ves-

sel, he/she will be required to provide the board with sufficient documentation to demonstrate to the board the amount of time involved in the navigation of a vessel underway.

WSR 18-14-034
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Behavioral Health Administration)

[Filed June 27, 2018, 8:43 a.m., effective July 28, 2018]

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

Purpose: The department is repealing chapter 388-865 WAC, Community mental health and involuntary treatment programs and chapter 388-877 WAC, Behavioral health services administrative requirements. The legislature passed 2ESHB 1388, transferring portions of the responsibility for behavioral health to the department of health and portions to the health care authority effective July 1, 2018. The rules in these chapters will be rewritten under the department of health and the health care authority, therefore no longer needed by the department of social and health services. The department of health has filed emergency rules under WSR 18-14-018 on June 25, 2018, to become effective July 1, 2018, and the health care authority filed emergency rules under WSR 18-14-027 on June 26, 2018, to become effective July 1, 2018.

Citation of Rules Affected by this Order: Repealing chapters 388-865 and 388-877 WAC.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035, and 71.34.380.

Other Authority: Chapter 201, Laws of 2018.

Adopted under notice filed as WSR 18-09-104 on April 18, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 141.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 141.

Date Adopted: June 27, 2018.

Katherine I. Vasquez
Rules Coordinator

REPEALER

The following chapters of the Washington Administrative Code are repealed July 1, 2018:

Chapter 388-865 WAC Community mental health and involuntary treatment programs.

Chapter 388-877 WAC Behavioral health services administrative requirements.

WSR 18-14-041
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 27, 2018, 3:31 p.m., effective July 28, 2018]

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

Purpose: The department is amending WAC 388-406-0010 How do I apply for cash assistance or basic food benefits? and 388-434-0010 How do I get basic food benefits after my certification period has ended?, in order to clarify the acceptable means a basic food applicant can use to sign their application for benefits.

Citation of Rules Affected by this Order: Amending WAC 388-406-0010 and 388-434-0010.

Statutory Authority for Adoption: The state legislature authorizes the department to administer SNAP and food assistance program for legal immigrants under RCW 74.04-500, 74.04.510, and 74.08A.120.

Adopted under notice filed as WSR 18-09-023 on April 11, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 27, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-10-046, filed 4/30/14, effective 6/1/14)

WAC 388-406-0010 How do I apply for cash assistance or basic food benefits? (1) You can apply for cash assistance or basic food by giving us an application form in

person, by mail, by fax, or by completing an online application.

(2) ~~((If your entire assistance unit (AU) gets or is applying for supplemental security income (SSI), your AU))~~ You can file an application for basic food at the local Social Security Administration district office (SSADO) if your entire assistance unit (AU) gets or is applying for supplemental security income (SSI).

(3) ~~((If you are incapacitated, a dependent child, or cannot apply for benefits on your own for some other reason;))~~ A legal guardian, caretaker, or authorized representative can apply for you if you are incapacitated, a dependent child, or cannot apply for benefits on your own for some other reason.

(4) You can apply for cash assistance or basic food with ~~((just))~~ one application form.

(5) ~~((If you apply for benefits at a local office;))~~ We accept your application on the same day ~~((you come in;))~~ if you apply for benefits at ((an)) a local office ((that does not serve the area where you live, we send your application to the appropriate office by the next business day so that office receives your application on the same day we send it)).

(6) We accept your application for benefits if it has at least:

(a) For cash assistance, the name, address, and signatures of the responsible adult AU members or person applying for you. A minor child may sign if there is no adult in the AU. Signatures must be handwritten, electronic, or digital as defined by the department, or a mark if witnessed by another person.

(b) For basic food, the name, address, and signature of a responsible member of your AU or person applying for you as an authorized representative under WAC 388-460-0005. Signatures must be handwritten, electronic, or digital as defined by the department, or a mark if witnessed by another person.

(7) As a part of the application process, we may require you to:

(a) Complete an interview if one is required under WAC 388-452-0005;

(b) Meet WorkFirst participation requirements for four weeks in a row if required under WAC 388-310-1600(12);

(c) Give us the information we need to decide if you are eligible as required under WAC 388-406-0030;

(d) Give us proof of information as required under WAC 388-490-0005 so we can determine if you are eligible; and

(e) Complete the WorkFirst orientation if required under WAC 388-400-0005(2) or 388-400-0010(3).

(8) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 04-19-133, filed 9/21/04, effective 10/22/04)

WAC 388-434-0010 How do I get basic food benefits after my certification period ~~((has ended))~~ ends? To keep getting basic food benefits after your certification period in WAC 388-416-0005 ~~((has ended))~~ ends, we must determine if you are still eligible for benefits. This is called recertification.

(1) To be recertified for basic food, you must:

(a) ~~((Turn in and))~~ Sign and turn in an application for benefits as required under WAC 388-406-0010 ~~((If you complete an electronic application, your signature is the password you use to complete the electronic application;))~~;

(b) Complete an interview if you are required to have ~~((an interview))~~ one under WAC 388-452-0005; and

(c) Submit needed proof of your circumstances if we ask for it.

(2) ~~((If you reapply timely and get recertified before your certification period ends;))~~ We ~~((will))~~ keep depositing your benefits into your EBT (electronic benefit transfer) account on the same day of the month if you reapply timely and get certified before your certification period ends. To reapply timely, we must get your application by the fifteenth day of the last month of your certification period.

(3) ~~((When we decide if you are eligible for benefits;))~~ We ~~((will))~~ send you a letter ~~((to tell))~~ telling you ((that)) if your benefits ~~((have been))~~ are approved or denied as required under chapter 388-458 WAC.

(4) ~~((If you reapply timely and complete the steps required in subsection (1) by the fifteenth day of the last month of your certification period;))~~ You will get ~~((the))~~ an approval or denial letter by the end of your current certification period if you reapply timely.

(5) ~~((If you do not turn in an application form by the end of your current certification period, you have not taken the action we require for you to get ongoing Basic Food benefits;))~~ Your basic food benefits stop at the end of your certification period if you do not turn in an application form by the end of your current certification period.

(6) ~~((If you turn in your application before your certification period ends;))~~ We start your basic food benefits from the first month of your new certification period ~~((after))~~ if we determine ~~((#))~~ you are eligible.

(a) ~~((If you do not reapply timely;))~~ Your benefits for the first month of your new certification period may be delayed if you do not reapply timely.

(b) You have until the end of the month following your certification period end date to complete an interview if required and provide any requested proof of your circumstances ~~((we requested))~~.

(c) We will not approve your recertification if you do not meet all requirements for verification by the end of the month following your certification end date ~~((, your recertification will not be approved))~~.

(7) If you turn in your application after your certification period ends;)) We treat ~~((the))~~ your application as a new application for benefits if we receive it after your certification period ends. We start your basic food from the date ~~((you turned in))~~ we received the application after we determine if you are eligible.

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.

WSR 18-14-042
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 28, 2018, 7:11 a.m., effective July 29, 2018]

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

Purpose: The department is amending WAC 458-20-196 to provide information on how to claim bad debt deductions, credits and refunds when reporting taxes on Washington excise tax returns. Examples are also provided.

Citation of Rules Affected by this Order: Amending WAC 458-20-196 Bad debts.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 18-10-106 on May 2, 2018.

Changes Other than Editing from Proposed to Adopted Version: References added throughout WAC 458-20-196 to refer to "recovery value" instead of market value, and "recovery" instead of repossession. This is for clarity, and does not represent a change in department policy. Added "sales or use taxes payable to a seller" in subsection (2)(b) to the list of items that are not bad debts. This is from RCW 82.04.4284, on bad debts, and is also not a policy change.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 28, 2018.

Erin T. Lopez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-21-012, filed 10/7/10, effective 11/7/10)

WAC 458-20-196 Bad debts. (1) **Introduction.** This ((section)) rule provides information about the tax treatment of bad debts ((under the business and occupation (B&O), public utility, retail sales, and use taxes).

(a) ~~**Bad debt deduction for accrual basis taxpayers.**~~ Bad debt credits, refunds, and deductions occur when income reported by a taxpayer is not received. Taxpayers who report using the cash method do not report income until it is received. For this reason, bad debts are most relevant to taxpayers reporting income on an accrual basis. However, some transactions must be reported on an accrual basis by all taxpayers, including installment sales and leases. These transactions are eligible for a bad debt credit, refund, or deduction as

described in this section. For information on cash and accrual accounting methods, refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods). Refer to WAC 458-20-198 (Installment sales, method of reporting) and WAC 458-20-199(3) for information about reporting installment sales.

~~(b) **Relationship between retailing B&O tax deduction and retail sales tax credit.**~~ Generally, a retail sales tax credit for bad debts is reported as a deduction from the measure of sales tax on the excise tax return. The amount of this deduction, or the measure of a recovery of sales tax that must be reported, may differ from the amount reported as a deduction or recovery from the retailing B&O tax classification due to exempt sales (for example: Sales of motor vehicles and trailers for use in interstate or foreign commerce (RCW 82.08.0263); sales of manufacturing machinery and equipment (RCW 82.08.02565).)

~~(c) **Relationship to federal income tax return.**~~ Washington credits, refunds, and deductions for bad debts are based on federal standards for worthlessness under section 166 of the Internal Revenue Code. If a federal income tax return is not required to be filed (for example, where the taxpayer is an exempt entity for federal purposes), the taxpayer is eligible for a bad debt credit, refund, or deduction on the Washington tax return if the taxpayer would otherwise be eligible for the federal bad debt deduction.

~~(2) **Retail sales and use tax.**~~

(a) ~~**General rule.**~~ Under RCW 82.08.037 and 82.12.037, sellers are entitled to a credit or refund for sales and use taxes previously paid on "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003. Taxpayers may claim the credit or refund for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. However, "bad debts" do not include:

(i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(ii) Expenses incurred in attempting to collect debt;

(iii) Debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller (see (c) of this subsection for additional information about this restriction); and

(iv) The value of repossessed property taken in payment of debt.

(b) ~~**Recoveries.**~~ If a taxpayer takes a credit or refund for sales or use taxes paid on a bad debt and later collects some or all of the debt, the amount of sales or use tax recovered must be repaid in the tax reporting period during which collection was made. The amount of tax that must be repaid is determined by applying the recovered amount first proportionally to the taxable price of the property or service and the sales or use tax thereon and secondly to any interest, service charges, and any other charges.

(c) ~~**Assigned debt and installment sales.**~~ Effective July 1, 2010, RCW 82.08.037 and 82.12.037 limit who can claim a credit or refund for retail sales or use tax. Only the original seller in the transaction that generated the bad debt, or a certified service provider (CSP) used by the seller, is entitled to claim a credit or refund on or after July 1, 2010. If the original

seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse, the original seller may claim a credit or refund only after the debt instrument is reassigned by the third party to the original seller. In the case where the seller uses a CSP to administer its sales tax responsibilities the CSP may claim, on behalf of the seller, the credit or refund allowed. See chapter 23, Laws of 2010, 1st sp. sess., (2ESSB 6143).

(3) Business and occupation tax.

(a) **General rule.** Under RCW 82.04.4284, taxpayers may deduct from the measure of B&O tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. However, the amount of the deduction must be adjusted to exclude amounts attributable to:

- (i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
- (ii) Sales or use taxes payable to a seller;
- (iii) Expenses incurred in attempting to collect debt; and
- (iv) The value of repossessed property taken in payment of debt.

(b) **Recoveries.** Recoveries received by a taxpayer after a bad debt is claimed are applied under the rules described in subsection (2)(b) of this section if the transaction involved is a retail sale. The amount attributable to "taxable price" is reported under the retailing B&O tax classification. If the recovery of debt is not related to a retail sale, recovered amount is applied proportionally against the components of the debt (e.g., interest and principal remaining on a wholesale sale).

(c) **Extracting and manufacturing classifications.** Bad debt deductions are only allowed under the extracting or manufacturing classifications when the value of products is computed on the basis of gross proceeds of sales.

(4) **Public utility tax.** Under RCW 82.16.050(5), taxpayers may deduct from the measure of public utility tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. No deduction is allowed for collection or other expenses.

(5) **Application of payments—General rule.** The special rules for application of payments received in recovery of previously claimed bad debts described in subsections (2)(b) and (3)(b) of this section are not used for other payments. Payments received before a bad debt credit, refund, or deduction is claimed should be applied first against interest and then ratably against other charges. Another commercially reasonable method may be used if approved by the department.

(6) **Private label credit cards.** If a business contracts with a financial company to provide a private label credit card program, and the financial company becomes the exclu-

sive owner of the credit card accounts and solely bears the risk of all credit losses, the business that contracted with the financial company is not entitled to any bad debt deduction if a customer fails to pay his or her credit card invoice.

Example. Hot Shot Ski Equipment (Hot Shot) is a sporting equipment retailer. Hot Shot contracts with ABC Financial Institution (ABC) to issue a Hot Shot private label credit card. ABC has the authority to accept or reject an applicant's credit card application. After Hot Shot transmits the credit card sales records to ABC, ABC pays Hot Shot the proceeds of the sales including the retail sales tax minus any applicable service fees. Hot Shot remits the retail sales tax to the Department of Revenue. If a customer using the Hot Shot credit card fails to pay ABC the outstanding amount on the credit card invoice, ABC suffers the loss. Hot Shot is not entitled to a bad debt deduction or credit as it has no bad debt loss when a customer defaults on a debt to ABC.

(7) **Reserve method.** Ordinarily, taxpayers must report bad debt refunds, credits or deductions for specifically identified transactions. However, taxpayers who are allowed by the Internal Revenue Service to use a reserve method of reporting bad debts for federal income tax purposes, or who secure permission from the department to do so, may deduct a reasonable addition to a reserve for bad debts. What constitutes a reasonable addition to a reserve for bad debts must be determined in light of the facts and will vary between classes of business and with conditions of business prosperity. An addition to a reserve allowed as a deduction by the Internal Revenue Service for federal income tax purposes, in the absence of evidence to the contrary, will be presumed reasonable. When the reserve method is employed, an adjustment to the amount of loss deducted must be made annually to make the total loss claimed for the tax year coincide with the amount actually sustained.

(8) **Statute of limitations for claiming bad debts.** No credit, refund, or deduction, as applicable, may be claimed for debt that became eligible for a bad debt deduction for federal income tax purposes more than four years before the beginning of the calendar year in which the credit, refund, or deduction is claimed.

(9) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

In all cases, an eight percent combined state and local sales tax rate is assumed. Figures are rounded to the nearest dollar. Payments are applied first against interest and then ratably against the taxable price, sales tax, and other charges except when the special rules for subsequent recoveries on a bad debt apply (see subsections (2) and (3) of this section). It is assumed that the income from all retail sales described has been properly reported under the retailing B&O tax classification and that all interest or service fees described have been accrued and reported under the service and other activities B&O tax classification.

(a) **Scenario 1.** Joe's Hardware makes a retail sale of goods with a selling price of \$500 and pays \$40 in sales tax to the department. No payment is received by Joe at the time of sale.

(i) **Bad debt.** One and a half years later, no payment has been received by Joe, and the balance with interest is \$627. Joe is entitled to claim a bad debt deduction on his federal income tax return. He is also entitled to claim a bad debt sales tax credit or refund in the amount of \$40, a B&O tax deduction of \$500 under the retailing B&O tax classification, and a B&O tax deduction of \$87 under the service and other activities B&O tax classification.

(ii) **Recoveries.** Six months after the credit and deduction are claimed, a \$50 payment is received on the debt. Recoveries received on a retail sale after a credit and deduction have already been claimed must be applied first proportionally to the taxable price and sales tax thereon in order to determine the amount of tax that must be repaid. Therefore, Joe must report \$4, or $\$50 \times (\$40/\$540)$, of sales tax on the current excise tax return and \$46, or $\$50 \times (\$500/\$540)$ under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$40 credit for sales tax is reduced to zero.

(b) **Scenario 2.** Joe makes a retail sale of goods on credit for \$500 and pays \$40 in sales tax to the department. No payment is received at the time of sale. Over the following year, regular payments are received and the debt is reduced to \$345, exclusive of any interest or service charges. The \$345 represents sales tax due to Joe in the amount of \$26, or $\$345 \times (\$40/\$540)$, and \$319 remaining of the original purchase price, or $\$345 \times (\$500/\$540)$. Payments cease.

(i) **Bad debt.** Six months later the balance with interest and service fees is \$413. Joe is entitled to claim a bad debt deduction on the federal income tax return. He is also entitled to claim a sales tax refund or credit on the current excise tax return of \$26, a deduction under the retailing B&O tax classification of \$319, and a deduction under the service and other activities B&O tax classification of \$68.

(ii) **Recoveries.** Before Joe charges off the debt, he repossesses the goods. At that time, the goods have a fair market value of \$250. No credit is allowed for repossessed property, so the value of the collateral must be applied against the outstanding balance. After the value of the collateral is applied, Joe has a remaining balance of \$163, or $\$413 - \250 . The allocation rules for recoveries do not apply because a bad debt credit or refund has not yet been taken. The value is applied first against the \$68, or $\$413 - \345 , of interest, so the \$163 remaining is attributable entirely to taxable price and sales tax. Any costs Joe may incur related to locating, repossessing, storing, or selling the goods do not offset the value of the collateral because no credit is allowed for collection costs. Joe is entitled to a sales tax refund or credit in the amount of \$12, or $\$163 \times (\$40/\$540)$ and deduction of \$151, or $\$163 \times (\$500/\$540)$ under the retailing B&O tax classification.

(iii) **Sales of repossessed goods.** If Joe later sells the repossessed goods, he must pay B&O tax and collect retail sales tax as applicable. If the sales price of the repossessed goods is different from the fair market value previously reported and the statute of limitations applicable to the original transaction has not expired, Joe must report the difference between the selling price and the claimed fair market value as an additional bad debt credit or deduction or report it as an additional recovery, as appropriate.

(c) **Scenario 3.** Phil, of Phil's Fine Cars, sells a car at retail for \$1000 and charges Alice, the buyer, an additional \$50 for license and registration fees.

(i) **Trade-in accepted.** Phil accepts trade-in property with a value of \$500 in which Alice has \$300 of equity. (The value of trade-in property of like kind is excluded from the selling price for purposes of the retail sales tax. Refer to WAC 458-20-247 for further information.) Phil properly bills Alice for \$40 of sales tax, for a total of \$1090 owed to Phil by Alice. Phil pays the department the \$40 in sales tax. No payment other than the trade-in is received by Phil at the time of sale.

(ii) **Bad debt.** Eight months later, Phil has not received any payment. Phil is entitled to claim a bad debt deduction on his federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to \$790, or $\$1090 - \300 . Phil is entitled to claim a sales tax credit or refund of \$29, or $\$790 \times (\$40/\$1090)$ of sales tax, and a deduction of \$725, or $\$790 \times (\$1000/\$1090)$ under the retailing B&O tax classification, exclusive of any deduction for accrued interest.

(d) **Scenario 4.** Phil sells a car at retail for \$1000, and charges Jake an additional \$50 for license and registration fees. Phil properly bills Jake for \$80 of sales tax and remits it to the department. No money is received from Jake at the time of sale.

(i) **Bad debt.** Eight months later Phil is entitled to claim a bad debt deduction on the federal income tax return. Phil claims an \$80 sales tax credit, a \$1000 retailing B&O tax deduction, and an additional amount under the service and other activities classification for accrued interest.

(ii) **Recoveries.** Six months after claiming a bad debt, Phil receives a \$200 payment from Jake. Recoveries must be allocated first proportionally to the taxable price (the measure of the sales tax) and the sales tax thereon, and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, Phil must report \$15, or $\$200 \times (\$80/\$1080)$ of sales tax and \$185, or $\$200 \times (\$1000/\$1080)$ of income under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$80 sales tax credit is reduced to zero.

(e) **Scenario 5.** Phil sells a car at retail for \$1000, and charges Robin an additional \$50 for license and registration fees.

(i) **Trade-in accepted.** Phil accepts trade-in property with a value of \$500 in which Robin has \$300 of equity. Phil properly bills Robin for \$40 of sales tax for a total of \$1090 owed to Phil by Robin. No payment other than the trade-in is received by Phil at the time of sale.

(ii) **Bad debt.** Eight months later, no payment has been received by Phil. Phil is entitled to claim a bad debt deduction on the federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to \$790, or $\$1090 - \300 . Phil is entitled to claim a sales tax credit or refund of \$29, or $\$790 \times (\$40/\$1090)$ of sales tax, and a deduction of \$725, or $\$790 \times (\$1000/\$1090)$ under the retailing B&O tax classification, exclusive of any deduction for accrued interest.

(iii) Recoveries. Six months after that, Phil receives a \$200 payment from Robin. Recoveries must be allocated first proportionally to the taxable price (the measure of the sales tax) and sales tax thereon, and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, Phil must report \$15, or $\$200 \times (\$40/\$540)$ in sales tax, and \$185, or $\$200 \times (\$500/\$540)$ under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$29 sales tax credit is reduced to zero.

(f) Scenario 6. The facts are the same as in Scenario 3 (e) of this subsection, except that immediately after the sale, Phil assigns the contract to a finance company without recourse, receiving face value for the contract. The finance company may not claim the retail sales tax credit or refund. The finance company may not claim any deductions for Phil's B&O tax liability. No bad debt deduction or credit is available to Phil, as the contract was sold without recourse.) when income is reported by a taxpayer, but that income is ultimately not received by the taxpayer.

(a) References to related rules. The department has adopted other rules that readers may want to refer to:

(i) WAC 458-20-197 When tax liability arises;

(ii) WAC 458-20-198 Installment sales, method of reporting;

(iii) WAC 458-20-199 Accounting methods;

(iv) WAC 458-20-229 Refunds.

(b) Examples. The rule includes a number of examples that identify a set of facts and then state a conclusion. These examples are only a general guide. The tax results of other situations must be determined after a review of all facts and circumstances. For each of the examples, assume an 8% retail sales tax rate.

(2) Definitions. The following definitions apply throughout this rule:

(a) "Bad debt" is an amount owed to the taxpayer as payment for the sale of goods, services, or digital products which is not actually received and is written off as a worthless debt on the taxpayer's books and records. For Washington excise tax reporting purposes, a bad debt is based on federal income tax standards of worthlessness under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003. A bad debt may only be taken by the original seller of goods, services, or digital products.

(b) "Bad debts" do not include:

(i) Amounts due on property remaining in the seller's possession until the full purchase price is paid;

(ii) Expenses incurred in attempting to collect debt;

(iii) Sales or use taxes payable to a seller;

(iv) Debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller (RCW 82.08.037 and 82.12.037. See subsection (6)(a) of this rule); and

(v) The value of repossessed property taken as payment of debt at the time the property is repossessed.

(3) Reporting a bad debt.

(a) Only amounts previously reported as gross income on the Washington excise tax return are eligible for reporting as bad debts to the state of Washington. The bad debts reported must meet the federal revenue code standards for worthless-

ness. However, if a taxpayer who is not required to file a federal return is otherwise eligible for a federal income tax bad debt deduction, credit, or refund, that taxpayer may claim a Washington bad debt deduction, credit, or refund on a previously paid Washington state tax. For taxpayers who file a consolidated federal return with controlled affiliates, the bad debt deduction, credit or refund is only available to the original seller or provider that incurred the loss from the worthless debt.

(b) Taxpayers who report using the cash method do not report income until it is received. For this reason, bad debts are most relevant to taxpayers reporting income on an accrual basis. However, some transactions must be reported on an accrual basis by all taxpayers, including installment sales and leases. These transactions are eligible for a bad debt deduction as described in this rule.

(c) Bad debts can be reported using one of the following methods:

(i) Deductions: Generally, a bad debt is reported as a deduction from the measure of the tax previously reported and paid on the excise tax return. The bad debts discussed in this rule are assumed to be reported as deductions unless otherwise stated.

(ii) Credits: A bad debt credit is most commonly taken when there is a change in the retail sales tax rate between the time of sale and the reporting of the bad debt. To claim the credit, a taxpayer must complete a Schedule B addendum to their excise tax return. This form is available on the department's web site at dor.wa.gov.

(iii) Refunds: A taxpayer may also claim a bad debt by requesting a refund directly from the department using the process as described in WAC 458-20-229.

(d) Reserve method. Ordinarily, taxpayers must report bad debt deductions, credits, or refunds for specifically identified transactions. However, taxpayers who are allowed by the Internal Revenue Service to use a reserve method of reporting bad debts for federal income tax purposes, or who secure permission from the department to do so, may deduct a reasonable addition to a reserve for bad debts. What constitutes a reasonable addition to a reserve for bad debts will vary by business type and economic factors. The department presumes reserve methods allowed by the Internal Revenue Service for federal income tax purposes are reasonable, absent contrary evidence. When the reserve method is used, the amount of loss deducted must be adjusted annually to make the total loss claimed for the tax year coincide with the amount of actual loss.

(e) Statute of limitations for claiming bad debts. No deduction, credit, or refund may be claimed for debt that became eligible for a bad debt deduction for federal income tax purposes more than four years before the beginning of the calendar year in which the credit, refund, or deduction is claimed.

(4) Claiming bad debt deductions for various taxes paid.

(a) Business and occupation (B&O) tax. Taxpayers may deduct from the measure of B&O tax, bad debts on which B&O tax was previously paid. RCW 82.04.4284.

(b) Retail sales and use tax. Taxpayers may take a bad debt deduction for retail sales and use taxes previously paid on bad debts. RCW 82.08.037 and 82.12.037.

Example 1. Joe's Hardware, which reports on an accrual basis, sells \$500 worth of goods to a buyer. Joe's Hardware receives no payment from the buyer at the time of sale. Joe's Hardware reports and remits \$40 (8% of \$500) in retail sales tax to the department. Joe's Hardware also reports \$500 of gross income under the retailing B&O tax classification, and reports service and other activities B&O tax on the interest and fees accruing on the outstanding balance.

A year and a half after the sale, Joe's Hardware has still not received any payment, and the balance with interest and fees is \$627 (\$500 selling price + \$40 retail sales tax + \$87 accrued interest and fees). Joe's Hardware meets the requirements to claim a federal income tax bad debt deduction. Therefore, it may claim a \$40 bad debt retail sales tax deduction, and a \$500 bad debt deduction from gross income under the retailing B&O tax classification. It may also take a bad debt deduction of \$87 for the accrued interest and fees previously reported under the service and other activities B&O tax classification.

(5) Post bad debt reporting: Payments, recoveries and repossessions.

(a) Application of payments.

If a taxpayer takes a bad debt deduction for a previously paid tax, and later collects some or all of the debt, the amount of tax recovered must be reported and paid in the tax-reporting period in which the collection was made. The amount of tax reported and paid on the recovery for B&O tax, retail sales tax, and use tax purposes is determined by first applying the recovered amount proportionally to the taxable price of the property or service and the retail sales or use tax thereon. Secondly, the recovered amount is applied to any interest, service charges, and any other charges. RCW 82.08.037(4).

Example 2. Joe's Hardware in Example 1 above receives a \$50 payment on the \$500 purchase six months after claiming the bad debt deduction. Joe's Hardware must report and pay an additional \$3.70 of retail sales tax on its current excise tax return ($\$50 \text{ payment} \times (\$40 \text{ retail sales tax} / \$540 \text{ selling price} + \text{retail sales tax})$).

In addition, it must report \$46.30 as gross income under the retailing B&O tax classification ($\$50 \text{ payment} \times (\$500 \text{ selling price} / \$540 \text{ selling price} + \text{retail sales tax})$).

Additional recoveries are reported in this same manner until the original \$40 retail sales tax bad debt deduction reduces to zero.

(b) Repossessions:

(i) The value of any property repossessed from a buyer for nonpayment must be subtracted from the value of the bad debt. In determining the amount of the bad debt deduction for B&O tax, retail sales tax, or use tax purposes, the repossessed value must first be applied to any accrued interest and fees. Any remaining value must be proportionally applied to the original selling value and retail sales tax.

(ii) For bad debt purposes, the value of repossessed property is its fair market value on the recovery date (recovery value). If post-recovery repairs and improvements that increase the value of the property are made after recovery and

prior to resale, the cost of these repairs may be subtracted from the selling price to establish its recovery value.

(iii) Only post-recovery repairs and improvements that increase the value of the repossessed property qualify to reduce its selling price to establish its recovery value. Repairs and improvements that are routine maintenance do not qualify to reduce the selling price of the repossessed property to establish its recovery value. In general, repairs and improvements considered routine in nature have a useful life of less than one year. Repairs with a useful life of more than one year are typically considered an improvement that increases the value of the property for the purpose of establishing recovery value.

In addition to routine maintenance costs, a taxpayer may not offset the value of repossessed property with any costs related to locating, repossessing, storing, or reselling the property, including associated attorney fees.

(iv) If the sales price of the repossessed property is less than the recovery value previously reported, the taxpayer must report the difference between the selling price and the claimed recovery value as an additional bad debt deduction. Alternatively, if the property resells for more than the recovery value previously reported, the taxpayer must report it as an additional recovery. This is because the sales price establishes the correct value of the repossessed goods.

Example 3. Phil's Fine Cars (Phil) sells a car to Alice on credit for \$1,000. Initially, Phil reports \$1,000 in gross income under the retailing B&O tax classification, and reports and remits \$80 in retail sales tax (8% of \$1,000). When Alice makes no payments, Phil repossesses the car. The recovery value of the repossessed car at the time of repossession is \$700. Also, assume \$63 in accrued interest at the time of repossession, resulting in an outstanding balance of \$1,143 (\$1,000 selling price + \$80 retail sales tax + \$63 accrued interest). The \$700 recovery value is first applied to the accrued interest, resulting in a selling price and retail sales tax balance of \$1,080. The remaining recovery value of \$637 ($\$700 - \$63 \text{ accrued interest}$) is applied to the balance of \$1,080, resulting in an outstanding balance of \$443 ($\$1,080 - \637) eligible for a bad debt deduction. Phil can claim a bad debt deduction of \$32.81 against the retail sales tax ($\$443 \times (\$80 / \$1,080)$), and a \$410.19 deduction against the measure of the retailing B&O tax ($\$443 \times (\$1,000 / \$1,080)$).

Example 4. If Phil's Fine Cars later resells the car repossessed from Alice in Example 3 in this subsection, it must collect and remit retail sales tax, and pay retailing B&O tax on the sale to a new buyer. The payment of the retail sales tax and retailing B&O tax on the sale of the repossessed car does not affect Phil's tax liability regarding the reported bad debt deduction from the original transaction. Here, Phil resells the car for its \$700 recovery value to a new buyer, Jim. Phil will collect and report \$56 of retail sales tax on the sale ($\$700 \times 8\%$), and report \$700 in gross income under the retailing B&O tax classification.

Example 5. Phil's Fine Cars repossessed a car from Bob. Phil's estimate of the car's recovery value upon repossession for bad debt reporting purposes was \$1,500. Phil reports a bad debt deduction based on this \$1,500 value, the outstanding debt balance, and any payments Bob made. Later, Phil makes repairs and improvements to the car and resells it to

Ron for \$2,500. In order for Phil to know if he needs to adjust his prior bad debt reporting he must determine if his original estimate of \$1,500 recovery value upon repossession was correct.

Phil made the following repair and maintenance expenditures after recovering the car from Bob, and before reselling it to Ron:

<u>Post Repossession Expense:</u>	<u>Reduction of selling price?</u>
Replace engine:	\$350 Yes, increases value
Replace windshield:	\$70 Yes, increases value
Replace filter:	\$20 No, maintenance
Replace wipers:	\$45 No, maintenance
Change oil filter:	\$50 No, maintenance
Repair transmission:	\$200 Yes, increases value
Detailing/cleaning:	\$75 No, maintenance
Replace tires:	\$130 Yes, increases value
Total expenses that increased value of the car: \$750	
Total expenses for maintenance: \$190	

Phil has repair and improvement costs of \$750 that qualify to reduce the selling price to determine the car's recovery value before any repairs and improvements. After reducing the \$750 of qualifying expenses from the \$2,500 resale price to Ron, the recovery value of the car at the time of repossession is \$1,750. Because the \$1,750 recovery value is greater than Phil's bad debt reporting estimate of \$1,500, Phil must adjust his bad debt reporting for the bad debt relating to the repossession from Bob. Phil must reduce his bad debt deduction previously taken by the \$250 in increased recovery value (\$1,750-\$1,500).

If Phil's qualifying repair expenses had been \$1,750, then the recovery value of the car repossessed from Bob would only have been \$750 (\$2,500 resale price - \$1,750 repairs). The lower actual recovery value increases the amount of bad debt, which allows for a larger bad debt deduction than had been originally reported by Phil.

(6) Assigned debt and private label credit cards.

(a) Assigned debt. RCW 82.08.037 and 82.12.037 limit who can claim a bad debt deduction for retail sales or use tax. Only the original seller in the transaction that generated the bad debt, or a certified service provider (CSP) as defined in RCW 82.32.020 used by the seller, is entitled to claim a bad debt deduction. If the original seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse back to the seller, the original seller may claim a bad debt deduction only if the debt instrument is reassigned by the third party back to the original seller. Alternatively, if the original seller has sold or assigned the debt instrument to a third party without recourse back to the seller, the original seller may not claim a bad debt deduction. Where the seller uses a CSP to administer its retail sales tax, the CSP may claim, on behalf of the seller, the bad debt deduction allowed.

Example 6. Immediately after Phil's Fine Cars sells a car, it assigns the contract to Finance Company ABC without

recourse back to Phil. Phil receives face value for the contract from Finance Company ABC. If the buyer fails to make payments, Finance Company ABC may not claim a bad debt deduction because it is not the original seller. Phil is also unable to claim a bad debt deduction because Finance Company ABC purchased the contract without recourse back to the seller.

(b) Private label credit cards. A seller is not eligible for a bad debt deduction, credit, or refund for customers failing to pay credit card invoices if the seller:

- Contracts with a third party, such as a financial institution, to provide a private label credit card program;
- The third party becomes the exclusive owner of the credit card accounts.

Example 7. Mountaintop Ski Equipment (Mountaintop) is a sporting equipment retailing chain store. Mountaintop contracts with ABC Financial Institution (ABC) to issue Mountaintop private label credit cards. ABC has the authority to accept or reject an applicant's credit card application. After Mountaintop transmits the credit card sales records to ABC, ABC pays Mountaintop the proceeds of the sales including the retail sales tax less any applicable service fees. Mountaintop reports and remits the retail sales tax to the department. If a customer using the Mountaintop credit card fails to pay ABC the outstanding amount on the credit card invoice, Mountaintop is not entitled to a bad debt deduction because it has no bad debt loss when a customer defaults on a debt to ABC.

WSR 18-14-072

PERMANENT RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed June 29, 2018, 1:21 p.m., effective July 30, 2018]

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

Purpose: Annual notification of accumulated service credits, to update the process of providing annual notification to members in accordance with RCW 41.50.065.

Citation of Rules Affected by this Order: Amending WAC 415-02-130.

Statutory Authority for Adoption: RCW 41.50.050, 41.50.065.

Adopted under notice filed as WSR 18-11-110 on May 22, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 29, 2018.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 12-12-047, filed 6/1/12, effective 7/2/12)

WAC 415-02-130 Will I receive retirement account information? (1) ~~((DRS will make annual statements available to all members who have a balance of service credit or dollars in accordance with RCW 41.50.065.~~

(2) ~~If you are a member of Plan 1 or 2, the information will include, but is not limited to, the following:~~

- ~~(a) Service credit;~~
- ~~(b) Contributions; and~~
- ~~(c) Regular interest.~~

(3) ~~If you are a member of Plan 3, the information will be provided through two sources.~~

~~(a) Service credit information, used in the calculation of the defined benefit component, will be made available annually by DRS.~~

~~(b) Information regarding the defined contribution component of your plan will be provided on quarterly statements from the recordkeeper. The statements include, but are not limited to, contributions and account activity.~~

~~(4) Information on annual and quarterly statements are) Your total service credit, earned by calendar month, is available in accordance with RCW 41.50.065 via a personal account on the DRS web site. DRS will remind you of the availability of service credit information in your online account with an annual notification on the DRS web site.~~

The department will provide you with a paper copy of your service credit upon request.

(2) Service credit is based on information provided to ((the department)) DRS by your employer, and ((are)) is subject to correction.

WSR 18-14-079
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING

[Filed June 30, 2018, 3:41 p.m., effective August 1, 2019]

Effective Date of Rule: August 1, 2019.

Purpose: Align foundational standards of care for early learning programs administered by family home and center child care providers; address critical health and safety needs of children enrolled in early learning programs, meet federal requirements, accommodate unique differences between family home and center environments, promote cultural diversity; and introduce education requirements that will better equip early learning providers with the necessary skills and knowledge to administer early learning programs that

fully protect the health and safety of children in their care while delivering the best possible care.

Citation of Rules Affected by this Order: New WAC 170-300-0001, 170-300-0010, 170-300-0015, 170-300-0016, 170-300-0020, 170-300-0025, 170-300-0030, 170-300-0055, 170-300-0065, 170-300-0080, 170-300-0085, 170-300-0100, 170-300-0105, 170-300-0106, 170-300-0107, 170-300-0110, 170-300-0111, 170-300-0115, 170-300-0120, 170-300-0130, 170-300-0135, 170-300-0140, 170-300-0145, 170-300-0146, 170-300-0147, 170-300-0150, 170-300-0155, 170-300-0160, 170-300-0165, 170-300-0166, 170-300-0170, 170-300-0175, 170-300-0180, 170-300-0185, 170-300-0186, 170-300-0190, 170-300-0195, 170-300-0196, 170-300-0197, 170-300-0198, 170-300-0200, 170-300-0205, 170-300-0210, 170-300-0215, 170-300-0220, 170-300-0221, 170-300-0225, 170-300-0230, 170-300-0236, 170-300-0240, 170-300-0241, 170-300-0245, 170-300-0250, 170-300-0255, 170-300-0260, 170-300-0265, 170-300-0270, 170-300-0275, 170-300-0280, 170-300-0281, 170-300-0285, 170-300-0290, 170-300-0295, 170-300-0296, 170-300-0300, 170-300-0305, 170-300-0310, 170-300-0315, 170-300-0320, 170-300-0325, 170-300-0330, 170-300-0331, 170-300-0335, 170-300-0340, 170-300-0345, 170-300-0350, 170-300-0354, 170-300-0355, 170-300-0356, 170-300-0357, 170-300-0360, 170-300-0401, 170-300-0402, 170-300-0415, 170-300-0420, 170-300-0425, 170-300-0435, 170-300-0436, 170-300-0440, 170-300-0443, 170-300-0450, 170-300-0455, 170-300-0460, 170-300-0470, 170-300-0475, 170-300-0480, 170-300-0485, 170-300-0486, 170-300-0490, 170-300-0495, 170-300-0500 and 170-300-0505; and amending WAC 170-300-0005.

Statutory Authority for Adoption: RCW 43.215.070 and 43.215.201; chapter 42.56 RCW.

Adopted under notice filed as WSR 18-11-042 on May 9, 2018.

Changes Other than Editing from Proposed to Adopted Version: WAC 170-300-0005 Definitions.

- "Contagious disease" list location clarified as WAC 246-110-010;
- "Disinfectant" changed to mean *a chemical or physical process that kills bacteria and viruses*;
- "Disinfect" changed to mean *eliminate virtually all germs from an inanimate surface by the process of cleaning and rinsing, followed by (a) A chlorine bleach and water solution following the manufacturer's instructions*;
- "Food worker card" changed to mean *a food and beverage service worker's permit as required under chapter 69.06 RCW*; and
- "Private septic system" insert reference to chapter 246-272A WAC to clarify definition.

WAC 170-300-0065, insert *when developmentally appropriate* at the end to add clarity.

WAC 170-300-0106(1), insert *State or federal rules may require health and safety training described under this chapter to be renewed annually*.

WAC 170-300-0130(3), insert *(f) Swimming pools under WAC 170-300-0175*.

WAC 170-300-0165:

- Remove "within six months of when this section takes effect" to clarify that alterations are not necessary for platforms and decks that met local building code at the time of construction; and
- Change minimum indoor temperature from 65 to 68 degrees *Fahrenheit*.

WAC 170-300-0170, change the minimum space between any generator and buildings, windows, doors, etc. from *fifteen* to *twenty* feet.

WAC 170-300-0175 (2)(d), insert reference to chapter 246-260 WAC for clarity.

WAC 170-300-0180, the frequency of tooth brushing opportunities an early learning provider must offer is reduced from *after every meal and snack* to *once daily*.

WAC 170-300-0185, the USDA Child and Adult Care Food Program (CACFP) *Handbook* changed to USDA Child and Adult Care Food Program (CACFP) *standards*.

WAC 170-300-0195(2), delete *unless the food is provided pursuant to WAC 170-300-0196(3)*.

WAC 170-300-0196:

- Change *licensed food service establishment* to *licensed food establishment*;
- Delete *department of health*; and
- Delete *as now and hereafter amended*.

WAC 170-300-0210:

- *As soon as possible* replaced with *consistent with chapter 246-105 WAC* in subsection (3); and
- *May* replaced with *shall* and *as now and hereafter amended* deleted from subsection (6).

WAC 170-300-0241(1), the frequency a freezer must be cleaned and sanitized reduced from *monthly* to *quarterly*.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 110, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 110, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 110, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 110, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 30, 2018.

Heather Moss
Director

AMENDATORY SECTION (Amending WSR 17-10-032, filed 4/26/17, effective 5/27/17)

WAC 170-300-0005 Definitions. The following definitions apply to this chapter:

"Accessible to children" means items, areas or materials of an early learning program that a child can reasonably reach, enter, use, or get to on their own.

"Accommodations" means program curriculum and instruction, activities, spaces, and materials that have been adapted to help children and adults with special need function within their surroundings.

"Active supervision" or **"actively supervise"** means ((focused attention and intentional observation of children at all times. An early learning provider must position themselves to observe all children: Watching, counting, and listening at all times. They also use their knowledge of each child's development and abilities to anticipate what a child may do, and get involved or redirect children if necessary. Infants, toddlers, and preschoolers must be supervised at all times including daily routines such as sleeping, eating, changing diapers, or using the bathroom)) a heightened standard of care beyond supervision. This standard requires an early learning provider to see and hear the children they are responsible for during higher risk activities. The provider must be able to prevent or instantly respond to unsafe or harmful events.

"ADA" refers to the Americans with Disabilities Act, as now and hereafter amended.

"Aide" is a person who offers support to the early learning program staff.

"Allergy" or **"allergies"** refers to an overreaction of the immune system to a substance that is harmless to most people. During an allergic reaction, the body's immune system treats the substance or "allergen" as an invader. The body overreacts by releasing chemicals that may cause symptoms ranging from mildly annoying to life threatening. Common allergens include certain foods (milk, eggs, fish, shellfish, common tree nuts, peanuts, wheat, and soybeans) pollen, mold, or medication.

"Annual" means the calendar year, January 1st through December 31st.

"Applicant" means an individual who has made a formal request for a child care license, certification, exemption, or portable background check.

"Appropriate" when used to refer to child care or educational materials means that the materials will interest and challenge children in terms of their ages and abilities.

"Appropriately" means correct or properly suited for a particular situation.

"Assistant director" is a person responsible for the overall management of the center early learning program including the facility and operations.

"Assistant teacher" is a person whose work is to assist a lead teacher or licensee in providing instructional supports to children and implementing a developmentally appropriate program. The assistant must carry out assigned tasks under the supervision of a lead teacher, program supervisor, director, assistant director, or licensee.

"ASTM" refers to the American Society for Testing and Materials.

"Bathroom" means a room containing a built-in, flush-type toilet.

"Bias" means a tendency to believe that some people or ideas are better than others that usually results in treating some people unfairly.

"Body of water" or "bodies of water" is a natural area or human-made area or device that contains or holds a depth of more than two inches of water. Examples include swimming pools, ditches, canals, fish ponds, water retention areas, excavations, and quarries.

"CACFP" means the Child and Adult Care Food Program established by Congress and funded by the United States Department of Agriculture (USDA).

"Cannabis" (also known as "marijuana") refers to all parts of the cannabis plant, whether growing or not, the seeds thereof, the resin or concentrate extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.

"Capacity" means the maximum number of children an early learning provider is authorized by the department to have in care at any given time. This includes any children on-site at the early learning program and any children in transit to or from the program or other activities such as field trips while the children are signed in to the care of the program.

"Center early learning program" is a facility providing regularly scheduled care for a group of children birth through twelve years of age for periods of less than twenty-four hours a day, pursuant to RCW 43.216.010 (1)(a) (child day care center).

"Center early learning program licensee" or "center licensee" means an entity licensed and authorized by the department to operate a center early learning program.

"Certificate of exemption (COE)" means a form that is approved by the Washington state department of health and consistent with the requirements of WAC 246-105-050(2), or an immunization form produced by the state immunization information system.

"Certificate of immunization status (child)" means a form that is approved by the Washington state department of health and consistent with the requirements of WAC 246-105-050(1), or an immunization form produced by the state immunization information system.

"Certification" means department approval of a person, home, or facility that is exempt from licensing but requests evidence that the program meets these foundational licensing standards.

"Child" means an individual who is younger than age thirteen, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

"Child abuse" or "neglect" means the physical abuse, sexual abuse, sexual exploitation, abandonment, negligent treatment or maltreatment of a child by any person as defined in RCW 26.44.020.

"Child care" refers to supervision of children outside the child's home for periods of less than twenty-four hours a day.

"Child care basics" or "CCB" means curriculum designed to meet the initial basic training requirement for early learning program staff working in licensed or certified programs in Washington state. It serves as a broad introduction for professionals who are pursuing a career in the early care and education field.

"Chromated copper arsenate" or "CCA" is a wood preservative and insecticide that contains roughly twenty-two percent arsenic, a known carcinogen. The United States restricted the use of CCA on residential lumber in 2003, but it can still be found on older decks and ((playgroup)) play-ground equipment. Information about the health hazards of arsenic can be found ((at the following DOH web site: <http://www.doh.wa.gov/CommunityandEnvironment/Contaminant/s/Arsenic>).

"Department" or "DEL" refers to the Washington state department of early learning.

"DOH" refers to the Washington state department of health)) on the department of health's web site.

"Clean" or "cleaning" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing or disinfecting a surface.

"Confidential" means the protection of personal information, such as the child's records, from individuals who are not authorized to see or hear the information.

"Consistent care" means providing steady opportunities for children to build emotionally secure relationships by primarily interacting with a limited number of early learning program staff.

"Contagious disease" means an illness caused by an infectious agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. Contagious diseases pertinent to this chapter are described in WAC 246-110-010.

"Continuous" means without interruptions, gaps, or stopping.

"Core competencies" are standards required by the department that detail what early learning providers need to know and are able to do to provide quality care and education for children and their families.

"CPSC" means the United States Consumer Product Safety Commission.

"Cultural" or "culturally" means in a way that relates to the ideas, customs, and social behavior of different societies.

"Curriculum philosophy" means a written statement of principles developed by an early learning provider to form the basis of the learning program of activities, including age appropriate developmental learning objectives for children.

"DCYF" or "the department" refers to the Washington state department of children, youth, and families.

"Developmental screening" is the use of standardized tools to identify a child at risk of a developmental delay or disorder. (Source: American Academy of Pediatrics, *Healthy Child Care America*, 2009).

"Developmentally appropriate" means:

(a) An early learning provider interacts with each child in a way that recognizes and respects the child's chronological and developmental age;

(b) Knowledge about how children grow and learn;

(c) Reflects the developmental level of the individual child; and

(d) Interactions and activities are planned with the developmental needs of the individual child in mind.

"Director" means the person responsible for the overall management of a center early learning program including the facility and operation.

"Disability" or **"disabilities"** has the same meaning in this chapter as in RCW 49.60.040(7), the Washington law against discrimination.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" means to eliminate virtually all germs from an inanimate surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution following the manufacturer's instructions; or

(b) Other disinfectant products registered with the EPA, if used strictly according to the manufacturer's label instructions including, but not limited to, quantity, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled "safe for food contact surfaces."

"Disinfectant" means a chemical or physical process that kills bacteria and viruses.

"Drinking water" or **"potable water"** is water suitable for drinking by the public as determined by the Washington state department of health or a local health jurisdiction.

"Dual language learners" refers to children who are learning two or more languages at the same time. This term includes children who learn two or more languages from birth, and children who are still mastering their home language when they are introduced to and start learning a second language. (Source: *The Washington State Early Learning and Development Guidelines*.)

"Early achievers" is a statewide system of high-quality early learning that connects families to early learning programs with the help of an easy to understand rating system and offers coaching, professional development, and resources for early learning providers to support each child's learning and development.

"Early childhood education (ECE) initial certificate" (twelve quarter credits) is Washington's initial certificate in early childhood education and serves as the point of entry for a career in early learning and covers foundational content for early learning professionals.

"Early childhood education (ECE) short certificate" (initial certificate plus eight quarter credits) is Washington's short certificate in early childhood education and offers areas of specialization, building on the state's initial certificate.

"Early childhood education (ECE) state certificate" (short certificate plus twenty-seven quarter credits) is Washington's state certificate in early childhood education and is the benchmark for Level 2 core competencies for early care and education professionals and prepares for the next step, an associate's degree in early childhood education.

"Early learning program" refers to regularly scheduled care for a group of children birth through twelve years of age for periods of less than twenty-four hours, licensed by the department.

"Early learning program space" means the licensed indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Early learning program staff" refers to all persons who work, substitute, or volunteer in an early learning program during hours when children are or may be present, excluding licensees.

"Early learning provider" or "provider" refers to an early learning licensee or designee who works in an early learning program during hours when children are or may be present. Designees include center directors, assistant directors, program supervisors, lead teachers, assistants, ((instructional aides,)) aides, and volunteers.

"ECEAP" or "early childhood education and assistance program" is a comprehensive preschool program that provides free services and support to eligible children and their families.

"Electronic record" means a record generated, communicated, received or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Electronic workforce registry" refers to the Washington state department of children, youth, and families' current database of professional records of individual early learning providers.

"Emergency preparedness" means a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination in case of emergencies or during incident response.

"Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(3). An early learning provider may contest enforcement actions and seek an adjudicative proceeding pursuant to chapter 110-03 WAC.

"EPA" means the United States Environmental Protection Agency.

"Equivalency" when referring to staff qualifications means an individual is allowed to meet the requirements of this chapter through a department recognized alternative credential, or demonstration of competency, that indicates similar knowledge as the named credential.

"Exempt" or "exemption" in regards to immunizations means a type of immunization status approved by the Washington state department of health where a child has not been fully immunized against one or more vaccine preventable diseases due to medical, religious, philosophical or personal reasons.

"Expel" or "expulsion" means to end a child's enrollment in an early learning program. An early learning provider will end a child's enrollment if the provider is unable to meet a child's needs due to the child's challenging behavior.

"Family home early learning program" means an early learning program licensed by the department where a family home licensee provides child care or education services for twelve or fewer children in the family living quarters where the licensee resides as provided in RCW 43.216.010 (1)(c) (family day care provider).

"Family home early learning program licensee" or **"family home licensee"** means an individual licensee authorized by the department to operate a family home early learning program within the licensee's family living quarters.

"Family living quarters" means a family home licensee or applicant's residence and other spaces or building on the premises.

"Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

"Foundational quality standards" refers to the administrative and regulatory requirements contained within this chapter. These standards are designed to promote the development, health, and safety of children enrolled in center and family home early learning programs. The department uses these standards to equitably serve children, families, and early learning providers throughout Washington state.

"Good repair" means about eighty percent of materials and components are unbroken, have all their pieces, and can be used by children as intended by the manufacturer or builder.

"Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of Washington state to provide health care in the ordinary course of business or practice of a profession.

"Household member" means one or more individuals who live in the same dwelling or share living arrangements, and may consist of family relatives or other groups of people.

"Immunization" is the process of administering a vaccine to make a person immune or resistant to an infectious disease.

"Inaccessible to children" means a method to prevent a child from reaching, entering, using, or getting to items, areas, or materials of an early learning program.

"Inactive" when used by the department to indicate a licensing status, means early learning providers who have requested and have been approved to temporarily cease caring for children and close their early learning program.

"Individual care plan" means a specific plan to meet the individual needs of a child with a food allergy, special dietary requirement due to a health condition, other special needs, or circumstances.

"Infant" is a child birth through eleven months of age.

"In-service training" means professional development requirements for continuing education delivered or approved by the department to maintain staff standards and qualifications while employed as an early learning provider.

"Internal review process" has the same meaning in this chapter as in RCW 43.216.395, as now or hereafter amended.

"Lead teacher" means an early learning provider who works as the lead staff person in charge of a child or group of children and implements activity programs.

"License" means a permit issued by the department legally authorizing an applicant to operate an early learning program.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" means an individual or legal entity listed on a license issued by the department, authorized to provide child care or early learning services in a center or family home setting.

"Lockdown" means restricted to an interior room with few or no windows while the facility or building is secured from a threat.

"Locking mechanism" means a lock that requires a key, tumbler, dial, passcode, touchpad, or similar device or method to lock and unlock.

"Modification" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to change the conditions identified on a licensee's current license.

"Nonexpiring license" means a license that is issued to an early learning provider following the initial licensing period, pursuant to chapter 43.216 RCW.

"Operating hours" means the hours listed in an early learning program parent handbook when the program is open and providing care and services to children.

"Parent" or **"guardian"** means birth parent, custodial parent, foster parent, legal guardian or those authorized by the parent or entity legally responsible for the welfare of the child.

"Peer interaction" refers to relationships children have with one another, which includes how infants and toddlers play near one another and how preschoolers play together, communicate, and whether they fight or get along.

"Personal needs" means an early learning provider's toileting or medication needs. Personal needs do not include smoking or use of tobacco products, illegal drug use or misuse or prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Pest" means an animal, plant, or insect that has a harmful effect on humans, food, or living conditions.

"Pesticide" refers to chemicals used to kill pests.

"Pet" means a domestic or tamed animal or bird kept for companionship or pleasure.

"Physical barrier" means a nonclimbable fence or a wall that is at least five feet tall and has no openings greater than two inches or a gate or door that allows entry to and exit from a body of water and has the following requirements in addition to those already listed: A locking mechanism, a self-closing or self-latching device, and a device used to open the locks which is inaccessible to children but readily available to staff.

"Physical restraint" means holding a child as gently as possible for the minimum amount of time necessary to control a situation where that child's safety or the safety of others is threatened.

"Poison" includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items that even in small quantities, are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed and unlicensed space at the licensed address including, but not limited to, buildings, land, and residences.

"Preschool-age children" means children thirty months through six years of age not attending kindergarten or elementary school.

"Preservice training" means professional development standards or requirements for early learning program staff prior to hiring or within a department specified time frame and delivered or approved by the department.

"Private septic system" means a septic system as defined in chapter 246-272A WAC that is not connected to a public sewer system or a large on-site sewage system as defined in chapter 246-272B WAC. A private septic system includes, but is not limited to, the septic system's drain field and tanks.

"Probationary license" has the same meaning as in RCW 43.216.010(23).

"Professional development support plan" is a formal means by which an individual who is supervising staff sets out the goals, strategies, and outcomes of learning and training.

"Program supervisor" means the center early learning provider responsible for planning and supervising the learning and activity program.

"RCW" means the Revised Code of Washington.

"Readily available" means able to be used or obtained quickly and easily.

"Revocation" or **"revoke"** when used in reference to an early learning provider's licensing status, means an enforcement action by the department to close an early learning program and permanently remove the license.

"Routine care" means typical or usual care provided to a child during the time the child is enrolled in the early learning program (for example: Feeding, diapering, toileting, napping, resting, playing, and learning).

"Safe route" means a way or course taken to get from a starting point to a destination that is protected from danger or risk.

"Safety plan" means a written plan to implement program changes to bring an early learning program into compliance with this chapter and chapter 43.216 RCW. Safety plans are developed at meetings involving at least an early learning provider and a department licensuror and supervisor. Safety plans detail changes the provider needs to make to mitigate the risk of direct and indirect harm to children enrolled in the early learning program. Program changes shall be agreed to in writing and signed by all participants at the meeting. Safety plans expire thirty calendar days after being signed by all parties. Safety plans may only be extended for an additional thirty days and extensions may only be authorized by a department supervisor.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing with water at a high temperature pursuant to this chapter; or

(b) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution following the manufacturer's instructions; or

(ii) Other sanitizer product if it is registered with the EPA and used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as "safe for food contact surfaces."

"School-age children" means a child not less than five years of age through twelve years of age who is attending kindergarten or elementary school.

"Screen time" means watching, using, or playing television, computer, video games, video or DVD players, mobile communication devices, or similar devices.

"Serious injury" means an injury resulting in an overnight hospital stay; a severe neck or head injury; choking or serious unexpected breathing problems; severe bleeding; shock or an acute confused state; sudden unconsciousness; dangerous chemicals in eyes, on skin, or ingested; near drowning; one or more broken bones; a severe burn requiring professional medical care; poisoning; or an overdose of a chemical substance.

"Shelter in place" means staff and children staying at the facility due to an external threat such as a storm, chemical or gas leak or explosion, or other event that prohibits the occupants from safely leaving the facility.

"Sign" means an individual formally placing their name or legal mark on a document by physical signature or electronic signature.

"Sleeping equipment" includes a bed, cot, mattress, mat, crib, bassinet, play yard or "pack and play" but does not include a car seat or infant swing.

"Special needs" is a term used for children who require assistance due to learning difficulties, physical disability, or emotional and behavioral difficulties and who have documentation in the form of an individual educational plan (IEP), individual health plan (IHP), 504 plan, or an individualized family service plan (IFSP).

"Staff" means any early learning provider providing care in the early learning program.

"Strengthening families program self-assessment" refers to a research informed approach to increase family strengths, enhanced child development, and reduce the likelihood of child abuse and neglect. It is based on engaging families, programs, and communities in building five protective factors:

(a) Parental resilience;

(b) Social connections;

(c) Knowledge of parenting and child development;

(d) Concrete support in times of need; and

(e) Social and emotional competence of children.

"Supervise" or **"supervision"** means an early learning provider must be able to see or hear the children they are responsible for at all times. Early learning providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Early learning providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. An early learning

provider must reassess and adjust their supervision each time child care activities change. See "active supervision" for a heightened standard of care.

"Suspend" when used in reference to an early learning provider's licensing status, means an enforcement action by the department to temporarily stop a license in order to protect the health, safety, or welfare of enrolled children or the public.

"Swimming pool" means a pool that has a water depth greater than two feet (24 inches).

"Technical assistance" means a service provided to early learning providers by department staff or a contracted third party. The goal of technical assistance is to offer guidance, information, and resources to help a provider fully comply with the licensing requirements of this chapter and chapter 43.216 RCW.

"Toddler" means a child twelve months through twenty-nine months of age.

"Tummy time" means placing an infant in a nonrestrictive prone position, lying on his or her stomach when not in sleeping equipment.

"Transition" is the process or period of time to change from one activity, place, grade level, or sleeping arrangement to another.

"Unlicensed space" means the indoor and outdoor areas of the premises not approved by the department as licensed space that the early learning provider must make inaccessible to the children during child care hours.

"Unsupervised access" as used throughout this chapter has the same meaning as in WAC 110-06-0020.

"USDA" means the U.S. Department of Agriculture.

"Usable space" means the areas that are available at all times for use by children in an early learning program and meets licensing requirements.

"Vapor product" means any:

(a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(b) Cartridge or container of a solution or substance intended to be used with or in such a device or to refill such a device; or

(c) Solution or substance intended for use in such a device including, but not limited to, concentrated nicotine, nonnicotine substances, or supplemental flavorings. This includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, hookahs, steam stones, vape pens, or similar products or devices, as well as any parts that can be used to build such products or services. "Vapor product" does not include any drug, device, or combination product approved for sale by the United States Food and Drug Administration that is marketed and sold for such approved purpose.

"Variance" is an official approval by the department to allow an early learning program to achieve the outcome of a rule or rules in this chapter in an alternative way than described due to the needs of a unique or specific program approach or methodology. The department must grant a request for variance if the proposed alternative provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning

provider does not have the right to appeal the department's disapproval of request for variance under chapter 110-03 WAC. The provider may challenge a variance disapproval on a department form.

"Volunteer" includes any person who provides labor or services to an early learning provider but is not compensated with employment pay or benefits. A volunteer must never have unsupervised access to a child unless the volunteer is the parent or guardian of that child or is an authorized person pursuant to WAC 110-300-0345 (1)(c). "Unsupervised access" has the same meaning here as in WAC 110-06-0020.

"WAC" means the Washington Administrative Code.

"Wading pool" means a pool that has a water depth of less than two feet (24 inches).

"Waiver" is an official approval by the department allowing an early learning provider not to meet or satisfy a rule in this chapter due to specific needs of the program or an enrolled child. The department must grant a request for waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An early learning provider does not have the right to appeal the department's disapproval of a waiver request under chapter 110-03 WAC. The provider may challenge a waiver disapproval on a department form.

"Walking independently" means an individual is able to stand and move easily without the aid or assistance of holding on to an object, wall, equipment, or another individual.

"Washington state early learning and development guidelines" refers to guidelines published by the department, the Washington state office of superintendent of public instruction (OSPI), and Thrive Washington for children birth through third grade that outlines what children know and are able to do at different stages of their development.

"Water activities" means early learning program activities in which enrolled children swim or play in a body of water that poses a risk of drowning for children. Water activities do not include using sensory tables.

"Weapon" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

"Written food plan" is a document designed to give alternative food to a child in care because of a child's medical needs or special diet, or to accommodate a religious, cultural, or family preference. A parent or guardian and the early learning provider must sign a written food plan.

INTENT AND AUTHORITY

NEW SECTION

WAC 170-300-0001 Intent and authority. (1) The department of children, youth, and families was established under chapter 6, Laws of 2017. Chapter 43.216 RCW establishes the department's responsibility and authority to set and enforce licensing requirements and ECEAP standards,

including the authority to adopt rules to implement chapter 43.216 RCW.

(2) Under chapter 7, Laws of 2015 3rd sp. sess. (Early Start Act), the state legislature directed the department to create a single set of licensing standards for center and family home providers.

(3) This chapter reflects the department's commitment to:

(a) Promoting the health, safety, and well-being of children;

(b) Expanding access to high quality early learning opportunities to improve outcomes for young children;

(c) Promoting strong school readiness; and

(d) Recognizing parents and guardians as a child's primary teacher and advocate.

(4) Pursuant to this chapter, the department will periodically monitor and assess early learning programs to determine compliance with these foundational quality standards.

NEW SECTION

WAC 170-300-0010 License required. (1) An individual or entity that provides child care and early learning services for a group of children, birth through twelve years of age, must be licensed by the department, pursuant to RCW 43.216.295, unless exempt under RCW 43.216.010(2) and WAC 110-300-0025.

(2) The department must not license a department employee or a member of the employee's household if the employee is involved directly, or in an administrative or supervisory capacity in the:

(a) Licensing process;

(b) Placement of a child in a licensed early learning program; or

(c) Authorization of payment for the child in care.

(3) A license is required when an individual provides child care and early learning services in his or her family home:

(a) Outside the child's home on a regular and ongoing basis for one or more children not related to the licensee; or

(b) For preschool age children for more than four hours a day.

As used in this chapter, "not related" means not any of the relatives listed in RCW 43.216.010 (2)(a).

(4) The department may license a center located in a private family residence when the portion of the residence accessible to children is:

(a) Used exclusively for children during the center's operating hours or when children are in care; or

(b) Separate from the family living quarters.

NEW SECTION

WAC 170-300-0015 Licensee absence. (1) In a family home early learning program, the licensee must have a written plan for when the licensee will be absent but the program remains open for the care of children. If a family home licensee is absent more than ten consecutive operating days, the licensee must submit a written notification to the department and each child's parent or guardian at least two business days prior to the planned absence.

(2) In a center early learning program, the licensee must have a written plan for when the director, assistant director, and program supervisor will be simultaneously absent but the program remains open for the care of children. If the director, assistant director, and program supervisor are simultaneously absent for more than ten consecutive operating days, an early learning provider must submit a written notification to the department and each child's parent or guardian at least two business days prior to the planned absence.

(3) A written notification under this section must include the following information:

(a) The time period of the absence;

(b) Emergency contact information for the absent early learning provider; and

(c) A written plan for program staff to follow that includes:

(i) A staffing plan that meets child-to-staff ratios;

(ii) Identification of a lead teacher to be present and in charge;

(iii) Early learning program staff roles and responsibilities;

(iv) How each child's needs will be met during the absence; and

(v) The responsibility for meeting licensing requirements.

(4) If a facility licensing compliance agreement (FLCA) is developed as a result of early learning program staff failing to comply with licensing regulations during an absence described in this section, an early learning provider must:

(a) Retrain early learning program staff on the foundational quality standards documented on the FLCA; and

(b) Document that the retraining occurred.

NEW SECTION

WAC 170-300-0016 Inactive status—Voluntary and temporary closure. (1) If a center or family home licensee plans to temporarily close their early learning program for more than thirty calendar days, and this closure is a departure from the program's regular schedule, an early learning provider must submit a notification to go on inactive status to the department at least two business days prior to the planned closure. Notifications for inactive status must include:

(a) The date the early learning program will cease operating;

(b) The reasons why the licensee is going on inactive status; and

(c) A projected date the early learning program will reopen.

(2) The requirements of this section do not apply to licensed early learning programs that have temporary closures beyond thirty calendar days as part of their regular schedule, such as programs based on the school year or seasonal occupation.

(3) A licensee may not request inactive status during their first initial licensing period (six months) unless for an emergency.

(4) An early learning provider must inform parents and guardians that the program will temporarily close.

(5) An early learning provider is responsible for notifying the department of changes to program status including voluntary closures, new household members or staff, or other program changes. Program status updates must also be completed in the department's electronic system.

(6) Background check rules in chapter 110-06 WAC, including allegations of child abuse or neglect, will remain in effect during inactive status.

(7) After receiving a notice of inactive status, the department will:

- (a) Place the license on inactive status;
- (b) Inform the licensee that the license is inactive; and
- (c) Notify the following programs of the inactive status:
 - (i) The department's child care subsidy programs;
 - (ii) USDA Child and Adult Care Food Program (CACFP); and
 - (iii) Early achievers, ECEAP, Head Start Grantee, and child care aware of Washington.

(8) A licensee is still responsible for maintaining annual compliance requirements during inactive status pursuant to RCW 43.216.305.

(9) If inactive status exceeds six months within a twelve-month period, the department must close the license for failing to comply with RCW 43.216.305(2). The licensee must reapply for licensing pursuant to RCW 43.216.305(3).

(10) The department may pursue enforcement actions after three failed attempts to monitor an early learning program if:

- (a) The early learning provider has not been available to permit the monitoring visits;
- (b) The monitoring visits were attempted within a three-month span to the monitoring due date; and
- (c) The department attempted to contact the provider by phone during the third attempted visit while still on the early learning premises.

(11) When a licensee is ready to reopen after a temporary closure, the licensee must notify the department in writing. After receiving notice of the intent to reopen, the department will:

- (a) Conduct a health and safety visit of the early learning program within ten business days to determine that the provider is in compliance with this chapter;
- (b) Activate the license and inform the licensee that the license is active; and
- (c) Notify the following programs of the active status:
 - (i) The department's child care subsidy programs;
 - (ii) CACFP; and
 - (iii) Early achievers, ECEAP, Head Start Grantee, and child care aware of Washington.

NEW SECTION

WAC 170-300-0020 Unlicensed programs. (1) If the department suspects that an individual or agency is providing unlicensed child care, the department must follow the requirements of RCW 43.216.360.

(2) If an individual decides to obtain a license, within thirty calendar days from the date of the department's notice in subsection (1) of this section, the individual or agency

must submit a written agreement on a department form stating they agree to:

- (a) Attend and participate in the next available department licensing orientation; and
- (b) Submit a licensing application after completing orientation.
- (3) The department's written notice under subsection (1) of this section must inform the individual or agency providing unlicensed child care:
 - (a) That the individual or agency must stop providing child care, pursuant to RCW 43.216.360;
 - (b) How to respond to the department;
 - (c) How to apply for a license;
 - (d) How a fine, if issued, may be suspended or withdrawn if the individual applies for a license;
 - (e) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and
 - (f) How to ask for a hearing, under chapter 34.05 RCW (Administrative Procedure Act), chapter 43.216 RCW, and chapter 110-03 WAC (department hearing rules).

(4) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (2) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

(5) A person providing unlicensed child care:

- (a) Shall be guilty of a misdemeanor pursuant to RCW 43.216.365; and
- (b) May be subject to an injunction pursuant to RCW 43.216.355.

NEW SECTION

WAC 170-300-0025 Certified and exempt programs.

(1) The department must not license a child care program that is legally exempt from licensing per RCW 43.216.010(2). However, if a child care program requests to become certified by the department, the department shall apply all licensing rules to the otherwise exempt program. In such a case, the department shall apply licensing rules equally to licensed and certified child care programs.

(2) The department may certify an otherwise exempt child care program for subsidy payment without further inspection if the program is:

- (a) Licensed by an Indian tribe, band, nation, or other organized community of Indians, including an Alaska native village as defined in 43 U.S.C. Sec. 1602(c), recognized as eligible for services by the United States Secretary of the Interior;
- (b) Certified by the federal Department of Defense; or
- (c) Approved by the office of superintendent of public instruction (OSPI).

(3) A child care program exempt from licensing pursuant to RCW 43.216.010(2) must use the department's form to submit their exempt status.

(4) A child care program requesting certification must be located on the premises over which the tribe, federal Department of Defense, or OSPI has jurisdiction.

(5) A child care program regulated by a tribe, the federal Department of Defense, or OSPI may request certification:

- (a) For subsidy payment only; or
- (b) As meeting foundational quality standards of this chapter.

(6) The department must not certify a department employee or a member of their household when the employee is involved directly, or in an administrative or supervisory capacity, in the:

- (a) Certification process;
- (b) Placement of a child in a certified program; or
- (c) Authorization of payment for the child in care.

NEW SECTION

WAC 170-300-0030 Nondiscrimination. (1) Early learning programs are defined by state and federal law as places of public accommodation that must:

(a) Not discriminate in employment practices or client services based on race, creed, ethnicity, national origin, marital status, gender, sexual orientation, class, age, religion, or ability; and

(b) Comply with the requirements of the Washington law against discrimination (chapter 49.60 RCW) and the ADA.

(2) An early learning program must have a written nondiscrimination policy addressing at least the factors listed in subsection (1) of this section.

CHILD OUTCOMES

NEW SECTION

WAC 170-300-0055 Developmental screening and communication to parents or guardians. (1) An early learning provider must inform parents or guardians about the importance of developmental screenings for each child from birth through age five.

(2) If not conducted on-site, an early learning provider must share information with parents or guardians about organizations that conduct developmental screenings such as a local business, school district, health care provider, specialist, or resources listed on the department web site.

NEW SECTION

WAC 170-300-0065 School readiness and family engagement activities. (1) At least once per calendar year, an early learning provider must supply to parents or guardians kindergarten or school readiness materials when developmentally appropriate for enrolled children.

(2) Kindergarten or school readiness materials must be the same or similar to resources posted online by OSPI, the department, or other equivalent organizations. These materials may address:

- (a) Kindergarten transition activities, if applicable; and
- (b) Developmentally appropriate local school and school district activities designed to engage families.

FAMILY ENGAGEMENT AND PARTNERSHIPS

NEW SECTION

WAC 170-300-0080 Family support self-assessment.

An early learning provider must assess their program within one year of being licensed, or within six months of the date this section becomes effective, to identify ways to support the families of enrolled children. A provider must complete the strengthening families program self-assessment, or an equivalent assessment, applicable to the early learning program type (center or family home).

NEW SECTION

WAC 170-300-0085 Family partnerships and communication. (1) An early learning provider must communicate with families to identify individual children's developmental goals.

(2) An early learning provider must attempt to obtain information from each child's family about that child's developmental, behavioral, health, linguistic, cultural, social, and other relevant information. The provider must make this attempt upon that child's enrollment and annually thereafter.

(3) An early learning provider must determine how the program can best accommodate each child's individual characteristics, strengths, and needs. The provider must utilize the information in subsection (2) of this section and seek input from family members and staff familiar with a child's behavior, developmental, and learning patterns.

(4) An early learning provider must:

(a) Attempt to discuss with parents or guardians information including, but not limited to:

(i) A child's strength in areas of development, health issues, special needs, and other concerns;

(ii) Family routines or events, approaches to parenting, family beliefs, culture, language, and child rearing practices;

(iii) Internal transitions within the early learning program and transitions to external services or programs, as necessary;

(iv) Collaboration between the provider and the parent or guardian in behavior management; and

(v) A child's progress, at least two times per year.

(b) Communicate the importance of regular attendance for the child;

(c) Give parents or guardians contact information for questions or concerns;

(d) Give families opportunities to share their language and culture in the early learning program;

(e) Arrange a confidential time and space for individual conversations regarding children, as needed;

(f) Allow parents or guardians access to their child during normal hours of operation, except as excluded by a court order; and

(g) Communicate verbally or in writing:

(i) Changes in drop-off and pickup arrangements as needed; and

(ii) Daily activities.

PROFESSIONAL DEVELOPMENT, TRAINING AND REQUIREMENTS

NEW SECTION

WAC 170-300-0100 General staff qualifications. All early learning providers must meet the following requirements prior to working:

(1) **Family home early learning program licensees** work from their private residence to provide early learning programming to a group of no more than twelve children present at one time.

(a) A family home licensee must meet the following qualifications upon application:

- (i) Be at least eighteen years old;
- (ii) Have a high school diploma or equivalent; and
- (iii) Complete the applicable preservice requirements pursuant to WAC 110-300-0105.

(b) A family home licensee must meet the following qualifications:

(i) Family home licensees must have an ECE initial certificate, or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective; and

(ii) Upon completion of the ECE initial certificate or equivalent, family home licensees must complete an ECE short certificate or equivalent within two years, as approved and verified in the electronic workforce registry by the department.

(A) If a family home licensee already has an existing ECE initial certificate or equivalent, the licensee must complete an ECE short certificate or equivalent within five years of licensure by the department.

(B) Five years from the date this rule takes effect, the family home licensee must complete an ECE short certificate or equivalent within three years.

(iii) Have their continued professional development progress documented annually.

(c) Family home licensees must provide the following services:

(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours, or designate a person with the qualifications of a family home licensee to be on-site when not present;

(ii) Comply with these foundational quality standards;

(iii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program;

(iv) Have knowledge of community resources available to families, including resources for children with special needs and the ability to share these resources with families; and

(v) Oversee early learning program staff and support staff in creating and maintaining staff records.

(2) **Center early learning program licensees** must meet the requirements of a center director, listed in subsection (3) of this section, or hire a center director who meets the qualifications prior to being granted an initial license. Center licensees who fulfill the role of center director in their early

learning program must complete all trainings and requirements for center directors.

(3) **Center directors or assistant directors** manage the early learning program and set appropriate program and staff expectations.

(a) A center director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) A center director working at the time this chapter becomes effective must complete an ECE state certificate or equivalent within five years of the date this section becomes effective;

(B) A center director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent at the time of hire.

(iii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program and at least six months of experience in administration or management or a department approved plan;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;

(v) If a center director does not meet the minimum qualification requirements, the center early learning program must employ an assistant director or program supervisor who meets the minimum qualifications of these positions;

(vi) Have their continued professional development progress documented annually.

(b) An assistant director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) An assistant director working at the time this chapter becomes effective must complete an ECE state certificate or equivalent within five years of the date this section becomes effective;

(B) An assistant director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent at the time of hire.

(iii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program or two years of experience in administration or management, or a department approved plan;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;

(v) Have their continued professional development progress documented annually.

(c) A center director or assistant director or equivalent must provide the following services:

(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours up to forty hours per week, or designate a person with the qualifications of an assistant director, program supervisor, or equivalent. A center director may act as a substitute teacher if acting as a substitute does not interfere with management or supervisory responsibilities;

- (ii) Comply with foundational quality standards;
- (iii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program (or designate a program supervisor with this responsibility);
- (iv) Have knowledge of community resources available to families, including resources for children with special needs and be able to share these resources with families; and
- (v) Oversee professional development plans for early learning program staff including, but not limited to:
 - (A) Providing support to staff for creating and maintaining staff records;
 - (B) Setting educational goals with staff and locating or coordinating state-approved training opportunities for staff; and
 - (C) Observing and mentoring staff.
- (4) **Center program supervisors** plan the early learning program services under the oversight of a center director or assistant director.
 - (a) A program supervisor must meet the following qualifications:
 - (i) Be at least eighteen years old;
 - (ii) If a director or assistant director has an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:
 - (A) A program supervisor must complete an ECE state certificate or equivalent within five years of the date this section becomes effective or from the date of hire or promotion, whichever is later;
 - (B) A program supervisor at the time of hire or promotion must have an ECE state certificate if the director or assistant director does not have an ECE state certificate.
 - (iii) Have two years of experience as a teacher of children in any age group enrolled in any early learning program;
 - (iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105; and
 - (v) Have their continued professional development progress documented annually.
 - (b) A program supervisor performs the following duties:
 - (i) Guide the planning of curriculum philosophy, implementation, and environmental design of the early learning program;
 - (ii) Comply with foundational quality standards;
 - (iii) Act as a teacher or director as long as it does not interfere with the program supervisor's primary responsibilities; and
 - (iv) Manage the professional development plans and requirements for staff as needed.
 - (c) One person may be the center director, assistant director, and the program supervisor when qualified for all positions, provided that all requirements of subsection (3)(a) and (b) of this section are met.
- (5) **Lead teachers** are responsible for implementing the center or family home early learning program. Lead teachers develop and provide a nurturing and responsive learning environment that meets the needs of enrolled children.
 - (a) A lead teacher must meet the following qualifications:
 - (i) Be at least eighteen years old;

- (ii) Have a high school diploma or equivalent; and
- (iii) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105.
- (b) A center lead teacher must meet the following requirements:
 - (i) Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or five years from being employed or promoted into this position at any licensed early learning program;
 - (ii) Progress towards an ECE short certificate or equivalent. A center lead teacher hired after this chapter becomes effective must have an ECE short certificate within two years of receiving an ECE initial certificate, or seven years from being employed or promoted into this position at any licensed early learning program; and
 - (iii) Have their professional development progress documented annually.
- (c) A family home lead teacher must meet the following requirements:
 - (i) Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted into this position at any licensed early learning program;
 - (ii) Prior to being in charge of their early learning program fifty percent or more of the time, a family home lead teacher must meet the qualifications of the family home licensee and complete or be registered in orientation training required in WAC 110-300-0105(1); and
 - (iii) Have their professional development progress documented annually.
- (6) **Assistant teachers** help a lead teacher or licensee provide instructional support to children and implement developmentally appropriate programs in center or family home early learning programs.
 - (a) An assistant teacher must meet the following qualifications:
 - (i) Be at least eighteen years old;
 - (ii) Have a high school diploma or equivalent; and
 - (iii) Have a minimum of an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted to this position at any licensed early learning program;
 - (iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105; and
 - (v) Have their professional development progress documented annually.
 - (b) Assistant teachers may work alone with children with regular, scheduled, and documented oversight and on-the-job classroom training from the classroom's assigned lead teacher who is primarily responsible for the care of the same group of children for the majority of their day.
 - (c) For continuity of care, assistant teachers can act as a substitute lead teacher up to two weeks. If longer than two weeks, the provider must notify the department with a plan to manage the classroom.

(7) **Aides** provide classroom support to an assistant teacher, lead teacher, program supervisor, center director, assistant director, or family home licensee. Aides must meet the following qualifications:

- (a) Be at least fourteen years old;
 - (b) Have a high school diploma or equivalent, or be currently enrolled in high school or an equivalent education program;
 - (c) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;
 - (d) Have their professional development progress documented annually; and
 - (e) Aides may be counted in the staff-to-child ratio if they are working under the continuous oversight of a lead teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee.
- (i) Aides working nineteen hours per month or less can count towards ratio with applicable preservice requirements pursuant to WAC 110-300-0105 and without in-service training requirements pursuant to WAC 110-300-0107 (1)(a).
- (ii) Aides who work twenty hours or more per month with a cumulative twelve months of employment must complete applicable preservice requirements pursuant to WAC 110-300-0105 and in-service training pursuant to WAC 110-300-0107 (1)(a).

(8) **Other personnel** who do not directly care for children and are not listed in subsections (1) through (7) of this section must meet the following qualifications:

- (a) Complete and pass a background check, pursuant to chapter 110-06 WAC;
- (b) Have a negative TB test, pursuant to WAC 110-300-0105; and
- (c) Complete program based staff policies and training, pursuant to WAC 110-300-0110.

(9) **Volunteers** help at early learning programs. Volunteers must meet the following qualifications:

- (a) Be at least fourteen years old (volunteers must have written permission to volunteer from their parent or guardian if they are under eighteen years old);
- (b) Work under the continuous oversight of a lead teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee;
- (c) Regular, ongoing volunteers may count in staff-to-child ratio if they:
 - (i) Complete and pass a background check, pursuant to chapter 110-06 WAC;
 - (ii) Complete a TB test, pursuant to WAC 110-300-0105;
 - (iii) Complete the training requirements, pursuant to WAC 110-300-0106;
 - (iv) Complete program based staff policies and training, pursuant to WAC 110-300-0110; and
 - (v) Have their professional development progress documented annually.
- (d) Occasional volunteers must comply with (a) and (b) of this subsection. Occasional volunteers may include, but are not limited to, a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration.

NEW SECTION

WAC 170-300-0105 Preservice requirements. (1) All applicants, coapplicants, family home licensees, center directors, assistant directors, and program supervisors must complete a department provided orientation for the applicable early learning program. Prior to being in charge of the early learning program fifty percent of the time or more, those newly promoted or assuming a role of one of the roles listed here must complete or be registered in orientation training.

(2) Early learning providers and household members in a family home early learning program must complete a department background check, pursuant to chapter 110-06 WAC.

(3) Early learning providers, including volunteers and household members in a family home early learning program ages fourteen and over, must provide documentation signed within the last twelve months by a licensed health care professional of tuberculosis (TB) testing or treatment consisting of:

- (a) A negative TB symptom screen and negative TB risk assessment;
 - (b) A previous positive FDA-approved TB test and a current negative chest radiograph and documentation of clearance to safely work or reside in an early learning program; or
 - (c) A positive symptom screening or a positive risk assessment with documentation of:
 - (i) A current negative FDA-approved TB test;
 - (ii) A previous or current positive FDA-approved TB test; and
 - (iii) A current negative chest radiograph and documentation of clearance to safely work or reside in an early learning program.
- (4) Upon notification of TB exposure, early learning providers may be required to be retested for TB as directed by the local health jurisdiction.

NEW SECTION

WAC 170-300-0106 Training requirements. (1) Early learning providers licensed, working, or volunteering in an early learning program before the date this section becomes effective must complete the applicable training requirements of this section within three months of the date this section becomes effective unless otherwise indicated. State or federal rules may require health and safety training described under this chapter to be renewed annually. Early learning providers hired after the date this section becomes effective must complete the training requirements of subsections (4) through (10) of this section within three months of the date of hire and prior to working in an unsupervised capacity with children.

(2) License applicants and early learning providers must register with the electronic workforce registry prior to being granted an initial license or working with children in an unsupervised capacity.

(3) License applicants, center directors, assistant directors, program supervisors, lead teachers, assistant teachers, and aides must complete the child care basics training as approved or offered by the department:

- (a) Prior to being granted a license;
- (b) Prior to working unsupervised with children; or

(c) Within three months of the date this section becomes effective if already employed or being promoted to a new role.

(4) Early learning providers must complete the recognizing and reporting suspected child abuse, neglect, and exploitation training as approved or offered by the department according to subsection (1) of this section. Training must include the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030.

(5) Early learning providers must complete the emergency preparedness training as approved or offered by the department (applicable to the early learning program where they work or volunteer) according to subsection (1) of this section.

(6) Early learning providers licensed to care for infants must complete the prevention and identifying shaken baby syndrome/abuse head trauma training as approved or offered by the department according to subsection (1) of this section.

(7) Early learning providers must complete the serving children experiencing homelessness training as approved or offered by the department according to subsection (1) of this section.

(8) License applicants and early learning providers licensed to care for infants must complete the safe sleep training as approved or offered by the department. This training must be completed annually and:

- (a) Prior to being licensed;
- (b) Prior to caring for infants; or
- (c) According to subsection (1) of this section.

(9) Family home licensees, center directors, assistant directors, program supervisors, lead teachers, and other appropriate staff members must complete the child restraint training as approved or offered by the department. This training must be completed annually; and:

- (a) Prior to being authorized to restrain an enrolled child; or
- (b) According to subsection (1) of this section.

(10) Family home licensees, center directors, assistant directors, program supervisors, and lead teachers must complete the medication management and administration training as approved or offered by the department prior to giving medication to an enrolled child, or as indicated in subsection (1) of this section.

(11) Early learning providers who directly care for children must complete the prevention of exposure to blood and body fluids training that meets Washington state department of labor and industries' requirements prior to being granted a license or working with children. This training must be repeated pursuant to Washington state department of labor and industries regulations.

(12) Early learning providers must have a current first-aid and cardiopulmonary resuscitation (CPR) certification prior to being alone with children. Early learning providers must ensure that at least one staff person with a current first-aid and CPR certificate is present with each group of children at all times.

(a) Proof of certification may be a card, certificate, or instructor letter.

- (b) The first-aid and CPR training and certification must:

(i) Be delivered in person and include a hands-on component for first aid and CPR demonstrated in front of an instructor certified by the American Red Cross, American Heart Association, American Safety and Health Institute, or other nationally recognized certification program;

- (ii) Include child and adult CPR; and
- (iii) Infant CPR, if applicable.

(13) Early learning providers who prepare or serve food to children at an early learning program must obtain a current food worker card prior to preparing or serving food. Food worker cards must:

- (a) Be obtained online or through the local health jurisdiction; and
- (b) Be renewed prior to expiring.

NEW SECTION

WAC 170-300-0107 In-service training. (1) An early learning provider must complete ten hours of annual in-service training after twelve months of cumulative employment.

(a) Family home licensees, center directors, assistant directors, program supervisors, lead teachers, and assistant teachers must complete the department enhancing quality of early learning (EQEL) in-service training within thirty-six months of being hired in a licensed facility, unless the provider has completed a department approved alternative training. EQEL hours may count towards the ten hours of annual in-service training.

(b) Every thirty-six months, following the completion of EQEL or a department approved alternative training, family home licensees, center directors, assistant directors, and program supervisors, must complete a minimum of ten hours of in-service training "child development" and a minimum of ten hours of in-service training on "leadership practices."

(i) Child development training includes the following Washington state core competencies: Child growth and development, curriculum and learning environment, ongoing measurements of child progress, family and community partnerships, health, safety, nutrition, and interactions.

(ii) Leadership practices training includes the following Washington state core competencies: Program planning and development, professional development, and leadership.

(2) In-service training requirements of this chapter may be met by completing college courses that align with the Washington state core competencies. These courses must be delivered by a postsecondary institution and approved by the department.

(3) Only five in-service training hours may be carried over from one fiscal year to the next fiscal year.

NEW SECTION

WAC 170-300-0110 Program based staff policies and training. (1) An early learning provider must have and follow written policies for early learning program staff. Staff policies must include those listed in subsections (2) and (3) of this section and must be reviewed and approved by the department prior to issuing a provider's initial license. Providers must notify the department when substantial changes are made.

(2) Early learning program staff policies must include, but are not limited to:

- (a) All of the information in the parent or guardian handbook except fees;
 - (b) Job descriptions, pay dates, and benefits;
 - (c) Professional development expectations and plans;
 - (d) Expectations for attendance and conduct;
 - (e) Early learning program staff responsibilities for:
 - (i) Child supervision requirements, including preventing children's access to unlicensed space;
 - (ii) Child growth and development;
 - (iii) Developmentally appropriate curriculum;
 - (iv) Teacher-child interaction;
 - (v) Child protection, guidance, and discipline techniques;
 - (vi) Safe sleep practices, if applicable;
 - (vii) Food service practices;
 - (viii) Off-site field trips, if applicable;
 - (ix) Transporting children, if applicable;
 - (x) Health, safety, and sanitization procedures;
 - (xi) Medication management procedures;
 - (xii) Medical emergencies, fire, disaster evacuation and emergency preparedness plans;
 - (xiii) Mandatory reporting of suspected child abuse, neglect, and exploitation, per RCW 26.44.020 and 26.44.030 and all other reporting requirements;
 - (xiv) Implementation of child's individual health care or special needs plan;
 - (xv) Following nonsmoking, vaping, alcohol and drug regulations;
 - (xvi) Overnight care, if applicable;
 - (xvii) Religious, equity and cultural responsiveness;
 - (xviii) Nondiscrimination;
 - (xvix) Planned daily activities and routines.
 - (f) Staff responsibilities if the family home licensee, center director, assistant director, or program supervisor is absent from the early learning program;
 - (g) A plan that includes how both administrative and child caretaking duties are met when a job requires such dual responsibilities; and
 - (h) Observation, evaluation, and feedback policies.
- (3) An early learning provider must have and follow written policies requiring staff working, transitioning, or covering breaks with the same classroom or group of children to share applicable information with each other on a daily basis regarding:
- (a) A child's health needs, allergies and medication;
 - (b) Any change in a child's daily schedule;
 - (c) Significant educational or developmental information;
 - (d) Any communications from the family; and
 - (e) Information to be shared with the family.
- (4) An early learning provider must develop, deliver, and document the delivery of early learning staff training specific to the early learning program and premises.
- (a) Training topics must include:
 - (i) Staff policies listed in subsections (2) and (3) of this section;
 - (ii) Chapter 43.216 RCW; and
 - (iii) Chapters 110-300 and 110-06 WAC.

(b) Training must be updated with changes in program policies and state or federal regulations.

NEW SECTION

WAC 170-300-0111 Staff oversight. (1) An early learning provider who oversees staff must:

- (a) Establish a work plan with clear expectations;
 - (b) Be aware of what staff members are doing; and
 - (c) Be available and able to respond in an emergency as needed to protect the health and safety of children in care.
- (2) When the family home licensee, center director, assistant director, program supervisor, lead teacher, or assistant teacher is the only staff supervising an aide or volunteer, the aide or volunteer may be out of the supervisor's visual and auditory range only when the aide, volunteer or supervisor is attending to personal needs.

NEW SECTION

WAC 170-300-0115 Staff records. (1) An early learning provider must establish a records system for themselves, household members, staff, and volunteers that complies with the requirements of this chapter. Early learning program staff records must be:

- (a) Verified by the licensee, center director, assistant director, or program supervisor;
 - (b) Entered and maintained in the electronic workforce registry, if applicable. Paper records may be discarded once entered into the electronic workforce registry and confirmed by the department;
 - (c) Updated to delete staff names from the electronic workforce registry when no longer employed at the early learning program; and
 - (d) Kept on-site or in the program's administrative office in a manner that allows the department to review the records.
- (2) Records for each early learning provider and staff member must include:
- (a) First and last name;
 - (b) Date of birth;
 - (c) Job title;
 - (d) First and last day of employment, if applicable;
 - (e) Proof of professional credentials, requirements, and training for each early learning staff member, pursuant to WAC 110-300-0100 through 110-300-0110.

(3) A licensee, center director, assistant director, or program supervisor must maintain the following records for each early learning provider and staff in a confidential manner. These records must be reviewable by the department and must include at a minimum:

- (a) A copy of current government issued photo identification;
- (b) Emergency contact information;
- (c) Completed employment application or resume;
- (d) Annual observation, evaluation, and feedback information; and
- (e) The licensee's Social Security number, federal EIN, or a written document stating the licensee does not possess either.

NEW SECTION

WAC 170-300-0120 Providing for personal, professional, and health needs of staff. (1) A licensee must provide for the personal and professional needs of staff by:

- (a) Having a secure place to store personal belongings that is inaccessible to children;
- (b) Having a readily accessible phone to use for emergency calls or to contact the parents of enrolled children; and
- (c) Providing file and storage space for professional materials.

(2) An early learning provider must be excluded from the early learning premises when that provider's illness or condition poses a risk of spreading a harmful disease or compromising the health and safety of others. The illnesses and conditions that require a staff member to be excluded are pursuant to WAC 110-300-0205.

(3) If a staff person has not been vaccinated, or has not shown documented immunity to a vaccine preventable disease, that person may be required by the local health jurisdiction or the department to remain off-site during an outbreak of a contagious disease described in WAC 246-110-010, as now and hereafter amended.

(4) An early learning program's health policy, pursuant to WAC 110-300-0500, must include provisions for excluding or separating staff with a contagious disease described in WAC 246-110-010, as now and hereafter amended.

ENVIRONMENT**Space and Furnishings**NEW SECTION

WAC 170-300-0130 Indoor early learning program space. (1) Indoor early learning program space must be accessible during program operating hours.

(2) Early learning program space, ramps, and handrails must comply with, be accessible to, and accommodate children and adults with disabilities as required by the Washington law against discrimination (chapter 49.60 RCW) and the ADA, as now and hereafter amended.

(3) Early learning program space must allow children to move between areas without disrupting another child's work or play.

(4) A family home licensee must provide a signed and dated declaration form annually stating that the early learning program meets the following requirements, as applicable, in unlicensed space:

- (a) Furnace area safety, or smoke or carbon monoxide detector requirements pursuant to WAC 110-300-0170(3);
- (b) Guns, weapons, or ammunition storage pursuant to WAC 110-300-0165 (2)(e);
- (c) Medication storage pursuant to WAC 110-300-0215;
- (d) Refrigerator or freezer pursuant to WAC 110-300-0165 (3)(d);
- (e) Storage areas that contain chemicals, utility sinks, or wet mops pursuant to WAC 110-300-0260; or
- (f) Swimming pools under WAC 110-300-0175.

NEW SECTION

WAC 170-300-0135 Routine care, play, learning, relaxation, and comfort. (1) An early learning provider must have accessible and child-size furniture and equipment (or altered and adapted in a family home early learning program) in sufficient quantity for the number of children in care. Tables must not be bucket style.

(2) Furniture and equipment must be:

- (a) Maintained in a safe working condition;
- (b) Developmentally and age appropriate;
- (c) Visually inspected at least weekly for hazards, broken parts, or damage. All equipment with hazardous, broken parts, or damage must be repaired as soon as possible and must be inaccessible to children until repairs are made according to the manufacturer's instructions, if available;
- (d) Arranged in a way that does not interfere with other play equipment;
- (e) Installed and assembled according to manufacturer's specifications;
- (f) Stored in a manner to prevent injury; and
- (g) Accessible to the child's height so that he or she can find, use, and return materials independently.

(3) An early learning provider must supply soft furnishings in licensed space accessible to children. Soft furnishings may include, but are not limited to, carpeted areas and area rugs, upholstered furniture, cushions or large floor pillows, and stuffed animals.

NEW SECTION

WAC 170-300-0140 Room arrangement, child-related displays, private space, and belongings. (1) Early learning materials and equipment must be visible, accessible to children in care, and must be arranged to promote and encourage independent access by children.

(2) An early learning provider must display age and developmentally appropriate early learning materials. Materials must be located at enrolled children's eye level and related to current activities or curriculum.

(3) An early learning provider must offer, or allow a child to create, a place for privacy. This space must:

- (a) Allow the provider to supervise children; and
- (b) Include an area accessible to children who seek or need time alone or in small groups.

(4) An early learning provider must have extra clothing available for children who wet, soil, or have a need to change clothes.

(5) An early learning provider must supply individual storage space for each child's belongings while in attendance. At a minimum, the space must be:

- (a) Accessible to the child; and
- (b) Large enough and spaced sufficiently apart from other storage space to:
 - (i) Store the child's personal articles and clothing; and
 - (ii) Promote or encourage children to organize their possessions.

(6) Child usable and accessible areas must be arranged to provide sufficient space for routine care, child play, and learning activities. These areas must be designed to:

- (a) Allow the provider to supervise or actively supervise the children, depending on the nature of the activities;
- (b) Allow children to move freely; and
- (c) Allow for different types of activities at the same time (for example: Blocks, puppets, language and literary materials, art materials, clay or play dough, music and movement, or dramatic play).

NEW SECTION

WAC 170-300-0145 Outdoor early learning program space. (1) An early learning provider must visually inspect outdoor program space and equipment daily to ensure outdoor areas and equipment are free of hazards.

(2) Outdoor play space must contain a minimum of seventy-five square feet of licensed usable space per child accessing the play space at any given time. An early learning provider may develop an alternate plan if an early learning program does not have enough outdoor play space to accommodate all enrolled children at once (for example, rotating groups of children to play outdoors or using an off-site play area). The department must approve alternate plans to use off-site play spaces.

(3) An early learning program must have shaded areas in outdoor play space provided by trees, buildings, or shade structures.

(4) Outdoor play space must promote a variety of age and developmentally appropriate active play areas for children in care. Activities must encourage and promote both moderate and vigorous physical activity such as running, jumping, skipping, throwing, pedaling, pushing, pulling, kicking, and climbing.

(5) When the licensed outdoor play space is not immediately adjacent to the early learning program site, an early learning provider must use a safe route when moving to and from the licensed outdoor play space.

(6) Licensed outdoor play areas must be enclosed with a fence or barrier that is intended to prevent children from exiting and discourages climbing. If the outdoor play area is enclosed by a barrier that is not a fence, the barrier may be a wall constructed with brick, stone, or a similar material.

(7) Licensed outdoor play areas must be enclosed to deter people without permission from entering the area.

(8) Fences, barriers, and gates must be in good condition, have no gap through which a sphere with a diameter of three and one-half inches can pass, and have a minimum height of forty-eight inches or conform in height to applicable local codes.

(9) The opening between a fence post and gate or fence post and building must have no gap through which a sphere with a diameter of three and one-half inches can pass.

(10) An early learning provider must not install any wooden fence, playground structure, or furniture if it contains chromated copper arsenate (CCA), creosote or pentachlorophenol. If wooden fences, structures, and furniture are suspected of having CCA, they must be tested. If CCA is present, fences, structures, and furniture must be removed or sealed with an oil-based outdoor sealant annually or as needed within six months of the date this section becomes effective.

(11) Within six months of the date this section becomes effective or prior to licensing, exiting mechanisms on gates from a licensed outdoor play area to unlicensed space must be equipped with a self-closing and self-latching mechanism (shuts automatically when released from an individual's control). A gate that is not an emergency exit must be locked or self-closing and self-latching.

(12) Outdoor play areas must have two exits that must not be partially or entirely blocked, with at least one exit located away from the building.

NEW SECTION

WAC 170-300-0146 Equipment and surfaces in outdoor early learning space. (1) Playground equipment and surfacing used by an early learning provider must comply with applicable CPSC guidelines, as now and hereafter amended including, but not limited to, installing, arranging, designing, constructing, and maintaining outdoor play equipment and surfacing.

(a) Climbing play equipment must not be placed on or above concrete, asphalt, packed soil, lumber, or similar hard surfaces;

(b) The ground under swings and play equipment must be covered by a shock absorbing material (grass alone is not an acceptable) such as:

- (i) Pea gravel at least nine inches deep;
- (ii) Playground wood chips at least nine inches deep;
- (iii) Shredded recycled rubber at least six inches deep; or
- (iv) Any material that has a certificate of compliance, label, or documentation stating it meets ASTM standards F1292-13 and F2223-10, as now and hereafter amended.

(2) Permanently anchored outdoor play equipment must not be placed over septic tank areas or drain fields, and must be installed according to the manufacturer's directions.

(3) Handmade playground equipment must be maintained for safety or removed when no longer safe. Prior to construction of new handmade playground equipment, the provider must notify the department and have plans and a materials list available upon request.

(4) Bouncing equipment including, but not limited to, trampolines, rebounders and inflatable equipment must be inaccessible and locked. This requirement does not apply to bounce balls designed to be used by individual children.

NEW SECTION

WAC 170-300-0147 Weather conditions and outdoor hazards. (1) An early learning provider must observe weather conditions and other possible hazards to take appropriate action for child health and safety. Conditions that pose a health or safety risk may include, but are not limited to:

- (a) Heat in excess of 100 degrees Fahrenheit or pursuant to advice of the local authority;
- (b) Cold less than 20 degrees Fahrenheit, or pursuant to advice of the local authority;
- (c) Lightning storm, tornado, hurricane, or flooding if there is immediate or likely danger;
- (d) Earthquake;
- (e) Air quality emergency ordered by a local or state authority on air quality or public health;

- (f) Lockdown notification ordered by a public safety authority; and
 - (g) Other similar incidents.
- (2) An early learning provider must dress children for weather conditions during outdoor play time.

ACTIVITIES

NEW SECTION

WAC 170-300-0150 Program and activities. (1) An early learning provider must supply children in care with early learning materials that are age and developmentally appropriate. For each age group of children in care, a provider must supply a variety of materials that satisfy individual, developmental, and cultural needs. Early learning materials must be:

- (a) Clean;
- (b) Washable or disposable;
- (c) Accommodating to a range of abilities of children in care;
- (d) Available to children in care appropriate to a child's age and developmental level;
- (e) Nonpoisonous and free of toxins. If an early learning provider is using prepackaged art materials, the materials must be labeled "non-toxic" and meet ASTM standard D-4236 as described in 16 C.F.R. 1500.14 (b)(8)(i), as now and hereafter amended;
- (f) In good and safe working condition;
- (g) Accommodating to special needs of children in care; and
- (h) Removed from the early learning program space once an item has been recalled by CPSC.

(2) An early learning provider must ensure a sufficient quantity and variety of materials to engage children in the early learning program (for example: Arts and crafts supplies, various textured materials, construction materials, manipulative materials, music and sound devices, books, and social living equipment). Materials must:

- (a) Encourage both active physical play and quiet play activities;
- (b) Promote imagination and creativity;
- (c) Promote language development and literacy skills;
- (d) Promote numeracy (counting and numbers) and spatial ability;
- (e) Encourage discovery and exploration; and
- (f) Promote learning skills.

NEW SECTION

WAC 170-300-0155 Use of television, video, and computers. If an early learning provider offers screen time to children in care:

- (1) The screen time available for each child:
 - (a) Must be educational, developmentally and age appropriate, nonviolent, and culturally sensitive; and
 - (b) Should be interactive with staff.
- (2) Children must not be required to participate in screen time activities. Alternative activities must be provided to children in care when screen time is offered.

(3) Screen time must not occur during scheduled meals or snacks.

(4) Total screen time must not exceed two and one-half hours per week for each child over twenty-four months of age through preschool in full-day care (one and one-quarter hours per child in half-day care).

(5) For school-age children, screen time must be limited to two and one-half hours per week for each child unless computer use is required for homework or a part of curriculum.

(6) There must not be intentional screen time for children under twenty-four months of age. An infant or toddler must be redirected from an area where screen time is displayed.

NEW SECTION

WAC 170-300-0160 Promoting acceptance of diversity. (1) An early learning provider must provide culturally and racially diverse learning opportunities. Diverse learning opportunities must be demonstrated by the provider's curriculum, activities, and materials that represent all children, families, and staff. A provider must use equipment and materials that include, but are not limited to:

- (a) Diverse dolls, books, pictures, games, or materials that do not reinforce stereotypes;
 - (b) Diverse music from many cultures in children's primary languages; and
 - (c) A balance of different ethnic and cultural groups, ages, abilities, family styles, and genders.
- (2) An early learning provider must intervene appropriately to stop biased behavior displayed by children or adults including, but not limited to:
- (a) Redirecting an inappropriate conversation or behavior;
 - (b) Being aware of situations that may involve bias and responding appropriately; and
 - (c) Refusing to ignore bias.

SAFETY

NEW SECTION

WAC 170-300-0165 Safety requirements. (1) An early learning provider must keep indoor and outdoor early learning program space, materials, and equipment free from hazards and in safe working condition. Equipment and toys purchased and used must be compliant with CPSC guidelines or ASTM standards, as now and hereafter amended. Playground equipment and surfaces must meet the requirements of WAC 110-300-0146.

(2) An early learning provider must take steps to prevent hazards to children including, but not limited to:

- (a) Making inaccessible to infants and toddlers any equipment, material, or objects that may pose a risk of choking, aspiration, or ingestion. For the purposes of this section, equipment, material, or objects that have a diameter or overall dimension of one and three-quarter inches or less shall be considered items that may pose a risk of choking, aspiration, or ingestion. Small parts from larger equipment, material, or objects that have a diameter or overall dimension of one and three-quarter inches or less, that may become detached from

the larger equipment, materials, or object shall also be considered items that may pose a risk of choking, aspiration, or ingestion;

(b) Eliminating and not using in the licensed space, pursuant to RCW 43.216.380, any window blinds or other window coverings with pull cords or inner cords capable of forming a loop and posing risk of strangulation to children.

(i) Window blinds and other window coverings that have been manufactured or properly retrofitted in a manner that eliminates the formation of loops posing a risk of strangulation are allowed; and

(ii) A window covering must not be secured to the frame of a window or door used as an emergency exit in a way that would prevent the window or door from opening easily.

(c) Making inaccessible to children straps, strings, cords, wires, or similar items capable of forming a loop around a child's neck that are not used during supervised early learning program activities;

(d) Making inaccessible to children plastic bags and other suffocation hazards;

(e) Ensuring firearms, guns, weapons, and ammunition are not on the premises of a center early learning program. Firearms, guns, weapons, and ammunition on the premises of a family home early learning program must be stored in a locked gun safe or locked room inaccessible to children. If stored in a locked room, each gun must be stored unloaded and with a trigger lock or other disabling device. The locked room must be inaccessible to children at all times;

(f) Preventing children from walking into or through a glass door, window, or other glass barrier, by placing stickers or art work at the children's eye level on the glass; and

(g) Cribs, play pens, bassinets, infant beds, and indoor climbing structures must not be placed next to windows, to prevent harm from shattered glass, unless the window is made of safety glass.

(3) An early learning provider must take measures intended to prevent other hazards to children in care in early learning program space including, but not limited to:

(a) **Cuts, abrasions, and punctures.** Equipment, materials, and other objects on the premises that have splintered edges, sharp edges, points, protruding nails, bolts, or other dangers must be repaired, removed, or made inaccessible to children;

(b) **Burns.** Equipment, materials, or products that may be hot enough to injure a child must be made inaccessible to children;

(c) **Sheering, crushing, or pinching.** Broken or cracked equipment, materials, and objects must be repaired, removed, or made inaccessible to children;

(d) **Entrapment.** Freezers, refrigerators, washers, dryers, compost bins, and other entrapment dangers must be inaccessible to children unless being actively supervised;

(e) **Tripping.** Tripping hazards must be eliminated. Uneven walkways, damaged flooring or carpeting, or other tripping hazards must be removed or repaired;

(f) **Falling objects.** Large objects that pose a risk of falling or tipping must be securely anchored. Large objects include, but are not limited to, televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units; and

(g) **Equipment in poor condition.** Equipment in poor condition (loose parts, rusty parts, flaking paint, or other dangers) must be repaired, removed, or made inaccessible to children.

(4) To ensure a safe environment for children in care, an early learning provider must comply with the following requirements:

(a) **Indoor temperatures for the premises.** The temperature of indoor early learning licensed space must be between 68 and 82 degrees Fahrenheit. If indoor licensed space is colder than 68 or hotter than 82 degrees Fahrenheit, an early learning provider must use climate control devices that are inaccessible to children to bring the temperature within the required range;

(b) **Window openings.** Windows within the reach of children must only open up to three and one-half inches or have some barrier or preventative measure to discourage children from exiting through the window. The three and one-half inch opening does not apply to exit windows in family home early learning programs;

(c) **Licensed space lighting.** Early learning program space must have natural or artificial light that provides appropriate illumination for early learning program activities and supervision. A provider must comply with all light fixture manufacturers' installation and use requirements. A provider must also ensure compliance with the following requirements:

(i) Light fixtures must have shatter-resistant covers or light bulbs;

(ii) Lights or light fixtures used indoors must be designed for indoor use only;

(iii) Free standing lamps must be attached or secured to prevent tipping; and

(iv) Halogen lamps and bulbs are prohibited.

(d) **Safe noise levels.** Noise levels must be maintained at a level in which a normal conversation may occur;

(e) **Safe water temperature.** All water accessible to enrolled children must not be hotter than 120 degrees Fahrenheit;

(f) **Stairway safety.**

(i) There must not be clutter or obstructions in the stairway;

(ii) All stairways (indoor and outdoor), not including play structures, must meet local building codes pursuant to RCW 43.216.340.

(A) Open stairways with no walls on either side must have handrails with slats (balusters) that prevent a child from falling off either side of the stairway.

(B) Stairways with a wall on only one side must have a handrail with slats (balusters) on the side without the wall that prevents a child from falling off the stairway.

(C) Stairways with a wall on both sides must have a handrail no higher than thirty-eight inches on at least one side of the stairway.

(iii) Stairways must have a pressure gate, safety gate or door to keep stairs inaccessible to infants and toddlers when not in use. Openings between slats on pressure or safety gates must not be large enough to allow a sphere that is three and one-half inches wide to pass through.

(g) **Platforms and decks.** All platforms and decks used for child care activities must meet local building codes pursuant to RCW 43.216.340. This does not include play equipment. All platforms and decks with a drop zone of more than eighteen inches must have guardrails in sections without steps.

(5) To ensure a safe environment for children in care, an early learning provider must comply with the following electrical requirements:

(a) In areas accessible to children, electrical outlets must have automatic shutters that only allow electrical plugs to be inserted (tamper-resistant) or that are covered by blank plates or other tamper-resistant covers appropriate to the electrical outlet;

(b) Outlets near sinks, tubs, toilets, or other water sources must be inaccessible to children or be tamper-resistant and equipped with a ground fault circuit interrupter (GFCI) outlet type;

(c) Electrical cords must be in good working condition, not torn or frayed, and not have any exposed wires;

(d) Electrical cords must be plugged directly into a wall outlet or a surge protector;

(e) Power strips with surge protectors may be used but must not be accessible to children in care;

(f) Extension cords may only be used for a brief, temporary purpose and must not replace direct wiring; and

(g) Electrical devices accessible to children must not be plugged into an electrical outlet near a water source such as sink, tub, water table, or swimming pool.

NEW SECTION

WAC 170-300-0166 Emergency preparation and exiting. (1) To be properly prepared for an emergency, an early learning program must have an emergency preparedness plan pursuant to WAC 110-300-0470.

(2) An early learning provider must have the following in case of an emergency:

(a) A working flashlight or other emergency lighting device must be available for use as an emergency light source. Battery powered flashlights must have an extra set of batteries easily available; and

(b) A working telephone must be available for use with sufficient backup power to function for at least five hours.

(3) To ensure a safe exit from the premises during an emergency, the early learning provider must comply with the following requirements:

(a) Emergency exit doors must remain unlocked from the inside, but may be locked from the outside while the early learning program is open. The door handle must be of the type that can be opened from the inside without the use of a key, tools, or special knowledge, and must automatically unlock when the knob or handle is turned;

(b) Exit doors that are not designated as an emergency exit door may be locked during operating hours. Locking interior doors in early learning program space must be designed to be unlocked from either side. An unlocking device must be readily available;

(c) Exit doors must not be partially or entirely blocked; and

(d) Family home early learning programs must have at least one pivoting or side-hinged swinging exit door. Other exit doors may be sliding glass doors.

NEW SECTION

WAC 170-300-0170 Fire safety. (1) An early learning provider must comply with the state building code, as now and hereafter amended, pursuant to RCW 19.27.031.

(2) An early learning provider must arrange for a fire safety inspection annually. A provider must arrange a fire safety inspection with a local government agency. If a local government agency is not available to conduct a fire safety inspection, a provider must inspect for fire safety using the state fire marshal form.

(3) To ensure a safe environment for children in care, an early learning provider must comply with the following fire safety requirements:

(a) **Combustible materials.**

(i) Combustible materials must be properly discarded pursuant to local jurisdictions, removed from the premises, or properly stored in closed metal containers specifically designed to hold such combustible materials;

(ii) Combustible materials stored in a closed metal container must not be stored in the premises licensed space or any place that may be accessible to children in care;

(iii) Combustible materials include, but are not limited to, lint, gasoline, natural gas, diesel, fuel, propane, rags soaked in combustible materials, oils, chemicals, or solvents.

(b) **Furnaces and other heating devices.**

(i) Paper, rubbish, or other combustible materials must be at least three feet from furnaces, fireplaces, or other heating devices;

(ii) Furnaces and other heating devices must be inaccessible to children in care; and

(iii) An appliance or heating device that has a surface capable of burning a child or reaching 110 degrees Fahrenheit must be inaccessible to children in care unless a program activity involves such an appliance or device and children are being actively supervised.

(c) **Electrical motors.** Electrical motor fans and appliances must be regularly cleaned to prevent accumulation of dust or lint.

(d) **Open flame devices, candles, matches and lighters.**

(i) Except for the use of a gas kitchen range, open flame devices must not be used in early learning program space or any other space accessible to children in care during operating hours;

(ii) Candles must not be used during operating hours;

(iii) Matches and lighters must be inaccessible to children.

(e) **Portable heaters and generators.** Portable heaters or fuel powered generators must not be used inside early learning program space during operating hours.

(i) In case of an emergency, a generator may be used but must be placed at least twenty feet from buildings, windows, doors, ventilation intakes, or other places where exhaust fumes may be vented into the premises or early learning space; and

(ii) Appliances must be plugged directly into a generator or into a heavy duty outdoor-rated extension cord that is plugged into a generator.

(f) **Fireplaces, woodstoves, or similar wood burning heating devices.** Chimneys, fireplaces, gas burning fireplaces, wood stoves or similar wood-burning devices must be inspected annually by a state or locally certified inspector, unless the provider submits to the department a written statement that the chimney, fireplace, wood stove or similar wood-burning device will not be used at any time.

(g) **Fire alarms and smoke and carbon monoxide detectors.**

(i) An early learning provider must have and maintain at least one smoke detector per licensed sleeping area and one per floor. Pursuant to the state building code, center early learning providers must comply with WAC 51-50-0907, as now and hereafter amended, and family early learning providers must comply with WAC 51-51-0314, as now and hereafter amended; and

(ii) An early learning provider must have and maintain carbon monoxide detectors. Pursuant to the state building code, center early learning providers must comply with WAC 51-50-0915, as now and hereafter amended, and family early learning providers must comply with WAC 51-51-0315, as now and hereafter amended.

(h) **Backup method to sound an alarm.** In addition to working smoke detectors, an early learning provider must have another method to alert all staff and enrolled children of a fire, emergency situation, or drill.

(i) **Extinguishers.** An early learning provider must have and maintain working fire extinguishers that are marked with a minimum rating of 2A:10 BC.

(i) Fire extinguishers must be located pursuant to the state building code chapter 51-54A WAC, as now and hereafter amended, and must be readily available for use in case of an emergency;

(ii) Fire extinguishers must be located on each level of the early learning program space used by children and mounted within seventy-five feet of an exit next to the path of the exit; and

(iii) If a fire extinguisher is mounted in a closet, there must be a sign indicating the location of the extinguisher and obstructions must not block access to the closet.

(j) **Monthly inspections.** An early learning provider must involve staff responsible for different groups of children or individual classrooms during monthly inspections. At least once per month, a provider must inspect the premises to identify possible fire hazards and eliminate any hazards found including, but not limited to:

- (i) Fire extinguishers;
- (ii) Smoke detectors;
- (iii) Alternate alarms; and
- (iv) Emergency lighting.

NEW SECTION

WAC 170-300-0175 Water hazards and swimming pools. To prevent injury or drowning and ensure the health and safety of children, an early learning provider must comply with the requirements described in this section.

(1) The following bodies of water must be inaccessible to children in care by using a physical barrier with a locking mechanism in compliance with WAC 246-260-031(4):

(a) Swimming pools when not being used as part of the early learning program, hot tubs, spas and jet tubs;

(b) Ponds, lakes, storm retention ponds, ditches, fountains, fish ponds, landscape pools or similar bodies of water; and

(c) Uncovered wells, septic tanks, wastewater, wastewater tanks, below grade storage tanks, farm manure ponds or other similar hazards.

(2) An early learning provider must comply with the following requirements when using a swimming pool as part of the early learning program:

(a) Comply with the supervision requirements of WAC 110-300-0350;

(b) Audible alarms must be on all doors, screens, and gates in licensed areas that lead to a swimming pool. The alarm must be sufficient to warn staff when children enter the outdoor area and could access the swimming pool;

(c) Swimming pools must be maintained according to manufacturer specifications;

(d) Swimming pools must be cleaned and sanitized according to manufacturer instructions, chapter 246-260 WAC, and department of health or local health jurisdiction guidelines;

(e) A swimming pool must not be used if the main drain cover is missing; and

(f) Children in diapers or toilet training must wear swim pants to lower the risk of contaminating the water.

(3) Filtered wading pools must be inaccessible to children when not in use. Wading pools that do not have a filtering system are not permitted in the early learning program space.

(4) For bodies of water not located in early learning program space, but that are in close proximity, a physical barrier on the property must make such bodies of water inaccessible to children in care.

(5) Five gallon buckets or other similar containers must not be used for infant or toddler water play.

(6) If an early learning provider uses water tables or similar containers, the tables or containers must be emptied and sanitized daily, or more often if necessary.

FOOD AND NUTRITION

NEW SECTION

WAC 170-300-0180 Meal and snack schedule. (1) An early learning provider must serve meals and snacks to children in care as follows:

(a) Meals and snacks must be served not less than two hours and not more than three hours apart unless the child is asleep;

(b) Children in care for five to nine hours:

(i) At least one meal and two snacks; or

(ii) Two meals and one snack.

(c) Children in care for more than nine hours:

(i) Two meals and two snacks; or

(ii) Three snacks and one meal.

(d) After school snack, dinner, evening snack, and breakfast:

(i) A snack or meal must be provided to a child that arrives to the early learning program after school;

(ii) Dinner must be provided to children in nighttime care if a child is at an early learning program after his or her dinnertime, or has not had dinner;

(iii) An evening snack must be provided to children in nighttime care;

(iv) Breakfast must be provided to children in nighttime care if a child remains in care after the child's usual breakfast time; and

(v) A breakfast or morning snack must be available to children in care.

(2) At least once per day, an early learning provider must offer children an opportunity for developmentally appropriate tooth brushing activities.

(a) Tooth brushing activities must be safe, sanitary, and educational.

(b) Toothbrushes used in an early learning program must be stored in a manner that prevents cross contamination.

(c) The parent or guardian of a child may opt out of the daily tooth brushing activities by signing a written form.

NEW SECTION

WAC 170-300-0185 Menus, milk, and food. To ensure proper nutrition of children in care, an early learning provider must comply with the child nutrition requirements described in this section.

(1) Meals, snack foods, and beverages provided to children in care must comply with the requirements contained in the most current edition of the *USDA Child and Adult Care Food Program (CACFP)* standards, or the *USDA National School Lunch and School Breakfast Program* standards.

(a) An early learning provider must supply dated menus.

(b) Food and beverage substitutions to a scheduled menu must be of equal nutritional value.

(c) An early learning provider must only serve water, unflavored milk or one hundred percent fruit or vegetable juice.

(d) An early learning provider must limit the consumption of one hundred percent fruit juice to no more than four to six ounces per day for children between one and six years old, and eight to twelve ounces per day for children seven through twelve years old.

(2) An early learning provider must serve a fruit or vegetable as one of the two required components during at least one snack per day.

NEW SECTION

WAC 170-300-0186 Food allergies and special dietary needs. (1) An early learning provider must obtain written instructions (the individual care plan) from the child's health care provider and parent or guardian when caring for a child with a known food allergy or special dietary requirement due to a health condition. The individual care plan pursuant to WAC 110-300-0300 must:

(a) Identify foods that must not be consumed by the child and steps to take in the case of an unintended allergic reaction;

(b) Identify foods that can substitute for allergenic foods; and

(c) Provide a specific treatment plan for the early learning provider to follow in response to an allergic reaction. The specific treatment plan must include the:

(i) Names of all medication to be administered;

(ii) Directions for how to administer the medication;

(iii) Directions related to medication dosage amounts; and

(iv) Description of allergic reactions and symptoms associated with the child's particular allergies.

(2) An early learning provider must arrange with the parents or guardians of a child in care to ensure the early learning program has the necessary medication, training, and equipment to properly manage a child's food allergies.

(3) If a child suffers from an allergic reaction, the early learning provider must immediately:

(a) Administer medication pursuant to the instructions in that child's individual care plan;

(b) Contact 911 whenever epinephrine or other lifesaving medication has been administered; and

(c) Notify the parents or guardians of a child if it is suspected or appears that any of the following occurred, or is occurring:

(i) The child is having an allergic reaction; or

(ii) The child consumed or came in contact with a food identified by the parents or guardians that must not be consumed by the child, even if the child is not having or did not have an allergic reaction.

(4) Early learning providers must review each child's individual care plan information for food allergies prior to serving food to children.

NEW SECTION

WAC 170-300-0190 Parent or guardian provided food and written food plans. (1) A written food plan must be developed by the provider and a child's parent or guardian, signed by all parties, and followed when accommodating a child's:

(a) Special feeding needs;

(b) Special diets;

(c) Religious or cultural preferences;

(d) Family preference; or

(e) Other needs.

(2) An early learning provider may allow or require parents or guardians to bring food for their child.

(3) If a parent or guardian provides meals for their child, an early learning provider must:

(a) Notify the parent or guardian in writing of the USDA CACFP requirements for each meal; and

(b) Supplement a child's meal that does not satisfy USDA CACFP requirements if necessary.

(4) On special occasions, such as birthdays, an early learning provider may allow parents or guardians to bring in snacks that may not satisfy the nutritional requirements for all children. The snacks provided must be limited to:

- (a) Store purchased fruits and vegetables (uncut);
- (b) Foods prepackaged in the original manufacturer containers; or
- (c) Snacks prepared, cooked, or baked at home by parents or guardians of a child in care. Prior to serving, an early learning provider must receive written permission from each child's parent or guardian stating their child may consume food prepared, cooked, or baked by another child's parent or guardian.

NEW SECTION

WAC 170-300-0195 Food service, equipment, and practices. (1) An early learning provider preparing or serving food must comply with the current department of health *Washington State Food and Beverage Workers' Manual* and supervise services that prepare or deliver food to the early learning program.

(2) Snacks and meals must be prepared and served by an early learning provider who possesses a valid and current food worker card pursuant to WAC 110-300-0106(13).

(3) An early learning provider must:

(a) Supply durable and developmentally appropriate individual eating and drinking equipment, or developmentally appropriate single use disposable items;

(b) Clean and sanitize eating and drinking equipment after each use. Water cups or bottles must be cleaned and sanitized daily if designated for a single child;

(c) Ensure plastic eating and drinking equipment does not contain BPA (a chemical used in hard plastic bottles and as a protective lining in food and beverage cans) or have cracks or chips;

(d) Use gloves, utensils, or tongs to serve food;

(e) Serve meals or snacks on plates, dishware, containers, trays, or napkins or paper towels, if appropriate. Food should not be served directly on the eating surface; and

(f) Be respectful of each child's cultural food practices.

(4) An early learning provider must:

(a) Serve each child individually or serve family style dining, allowing each child the opportunity to practice skills such as passing shared serving bowls and serving themselves; and

(b) Sit with children during meals.

NEW SECTION

WAC 170-300-0196 Food sources. (1) Food prepared and served from an early learning program must not be tampered with or spoiled.

(2) Food prepared and served from an early learning program must be obtained from an approved source licensed and inspected by the local health jurisdiction, the Washington state department of agriculture (WSDA), or the USDA. Food items not approved to be served to children in care include:

(a) Meat, fish, poultry, eggs, or milk that has not been inspected by the USDA or WSDA;

(b) Home canned food;

(c) Game meat or other meat that has not been inspected by the WSDA or USDA;

(d) Leftover food that was previously served from outside of the early learning program; or

(e) Food from roadside stands selling without a permit.

(3) Food not prepared on-site by an early learning provider, pursuant to WAC 110-300-0195(2), must be provided by:

(a) A licensed food establishment, kitchen, or catering business that meets food service requirements (chapter 246-215 WAC) and is regularly inspected by a local health jurisdiction;

(b) A parent or guardian for his or her own children; or

(c) A manufacturer of prepackaged food.

(4) Fruits and vegetables (produce) grown on-site in a garden as part of an early learning program may be served to children as part of a meal or snack. Prior to preparing and serving:

(a) The produce must be thoroughly washed and scrubbed in running cold water to remove soil and other contaminants;

(b) Damaged or bruised areas on the produce must be removed; and

(c) Produce that shows signs of rotting must be discarded.

NEW SECTION

WAC 170-300-0197 Safe food practices. (1) Early learning providers must wash their hands, pursuant to WAC 110-300-0200.

(2) Early learning providers must store, prepare, cook, hold food, and wash dishes, pursuant to WAC 110-300-0195.

(3) For all foods offered by the provider or given to an enrolled child by a parent or guardian, the provider must:

(a) Provide appropriate refrigeration to preserve foods from spoiling. Foods that may be subject to spoiling include, but are not limited to, meats, cooked potatoes, cooked legumes, cooked rice, sprouts, cut melons, cut cantaloupes, milk, and cheese; and

(b) Refrigerate foods requiring refrigeration at 41 degrees Fahrenheit or less and freeze foods required to be frozen at 10 degrees Fahrenheit or less.

(4) Food must be stored as follows:

(a) In original containers or in clean, labeled, dated, and airtight food grade containers, if appropriate;

(b) Food not required to be refrigerated or frozen must not be stored directly on the floor;

(c) In a manner that prevents contamination;

(d) Food and food service items (such as utensils, napkins, and dishes) must not be stored in an area with toxic materials (such as cleaning supplies, paint, or pesticides);

(e) Food that is past the manufacturer's expiration or "best served by" date must not be served to enrolled children; and

(f) Raw meat must be stored in the refrigerator or freezer below cooked or ready to eat foods.

(5) For food requiring temperature control, a center early learning program must maintain a food temperature log by using a calibrated and working metal stem-type or digital food thermometer.

(6) Prior to storing leftover food in a refrigerator or freezer, an early learning provider must label the food with the date the leftover food was opened or cooked.

(7) An early learning provider may serve leftover food that originated from the early learning program if the leftover food was not previously served and:

(a) Refrigerated leftover food must be stored and then served again within forty-eight hours of originally being prepared; or

(b) Frozen leftover food must be promptly served after thawing and being cooked.

(8) Frozen food must be thawed by one of the following methods:

(a) In a refrigerator;

(b) Under cool running water inside a pan placed in a sink with the drain plug removed; or

(c) In a microwave if the food is to be cooked as part of the continuous cooking process.

NEW SECTION

WAC 170-300-0198 Food preparation areas. (1) An early learning provider or staff must clean and sanitize food preparation areas and eating surfaces before and after each use, pursuant to WAC 110-300-0241 (1)(a).

(2) In an early learning program's food preparation area, kitchens must:

(a) Have walls, counter tops, floors, cabinets, and shelves that are:

(i) Maintained in good repair including, but not limited to, being properly sealed without chips, cracks, or tears; and

(ii) Moisture resistant.

(b) Have a properly maintained and vented range hood, exhaust fan, or operable window; and

(c) Have a properly maintained and working refrigerator, freezer, or a combination refrigerator and freezer with sufficient space for proper storage and cooling of food.

(3) An early learning provider must:

(a) Have at least eight feet between the food preparation area and any diaper changing tables or counters and sinks used for diaper changing;

(b) Clean and sanitize a sink immediately before using it to prepare food to be served to children in care;

(c) Use a colander or other method to prevent food and kitchen utensils from touching the sink basin; and

(d) Clean dishes, pans, baby bottles, and kitchen utensils as follows:

(i) Cleaning and sanitizing with an automatic dishwasher that uses heat or chemicals to sanitize; or

(ii) Handwashing, rinsing, sanitizing, and allowing to air dry.

(4) Center early learning programs licensed after the date this chapter becomes effective must have:

(a) A handwashing sink separate from dishwashing facilities;

(b) A food preparation sink located in the food preparation area; and

(c) A method to clean and sanitize dishes, pans, kitchen utensils, and equipment in the food preparation area using:

(i) A two-compartment sink and an automatic dishwasher that sanitizes with heat or chemicals; or

(ii) A three-compartment sink method (sink one is used to wash, sink two is used to rinse, sink three contains a sanitizer, and the dishes are allowed to air dry).

(5) An early learning provider may use the kitchen for actively supervised cooking or food preparation activities with children in care.

HEALTH PRACTICES

NEW SECTION

WAC 170-300-0200 Handwashing and hand sanitizer. (1) Early learning providers must comply with the following handwashing procedures or those defined by the United States Center for Disease Control and Prevention, and children should strongly be encouraged to:

(a) Wet hands with warm water;

(b) Apply soap to the hands;

(c) Rub hands together to wash for at least twenty seconds;

(d) Thoroughly rinse hands with water;

(e) Dry hands with a paper towel, single-use cloth towel, or air hand dryer;

(f) Turn water faucet off using a paper towel or single-use cloth towel unless it turns off automatically; and

(g) Properly discard paper single-use cloth towels after each use.

(2) An early learning provider must wash and sanitize cloth towels after a single use. Soiled and used towels must be inaccessible to children.

(3) To prevent children from being burned, air hand dryers must have a heat guard (barrier that prevents user from touching heating element) and turn off automatically.

(4) Early learning providers must wash their hands following the handwashing procedures listed above:

(a) When arriving at work;

(b) After toileting a child;

(c) Before and after diapering a child (use a wet wipe in place of handwashing during the middle of diapering if needed);

(d) After personal toileting;

(e) After attending to an ill child;

(f) Before and after preparing, serving, or eating food;

(g) Before preparing bottles;

(h) After handling raw or undercooked meat, poultry, or fish;

(i) Before and after giving medication or applying topical ointment;

(j) After handling or feeding animals, handling an animal's toys or equipment, or cleaning up after animals;

(k) After handling bodily fluids;

(l) After using tobacco or vapor products;

(m) After being outdoors;

(n) After gardening activities;

(o) After handling garbage and garbage receptacles; and

(p) As needed or required by the circumstances.

(5) Early learning providers must direct, assist, teach, and coach, children to wash their hands, using the steps listed above:

(a) When arriving at the early learning premises;

- (b) After using the toilet;
 - (c) After diapering;
 - (d) After outdoor play;
 - (e) After gardening activities;
 - (f) After playing with animals;
 - (g) After touching body fluids such as blood or after nose blowing or sneezing;
 - (h) Before and after eating or participating in food activities including table setting; and
 - (i) As needed or required by the circumstances.
- (6) Hand sanitizers or hand wipes with alcohol may be used for adults and children over twenty-four months of age under the following conditions:
- (a) When proper handwashing facilities are not available; and
 - (b) Hands are not visibly soiled or dirty.
- (7) Children must be actively supervised when using hand sanitizers to avoid ingestion or contact with eyes, nose, or mouths.
- (a) Hand sanitizer must not be used in place of proper handwashing.
 - (b) An alcohol-based hand sanitizer must contain sixty to ninety percent alcohol to be effective.

NEW SECTION

WAC 170-300-0205 Child, staff, and household member illness. (1) An early learning provider must observe all children for signs of illness when they arrive at the early learning program and throughout the day. Parents or guardians of a child should be notified, as soon as possible, if the child develops signs or symptoms of illness.

(2) If an early learning provider becomes ill, a licensee, center director, assistant director, or program supervisor must determine whether that person should be required to leave the licensed early learning space.

(3) When a child becomes ill, an early learning provider (or school nurse, if applicable) must determine whether the child should be sent home or separated from others. A provider must supervise the child to reasonably prevent contact between the ill child and healthy children.

(4) An ill child must be sent home or reasonably separated from other children if:

- (a) The illness or condition prevents the child from participating in normal activities;
- (b) The illness or condition requires more care and attention than the early learning provider can give;
- (c) The required amount of care for the ill child compromises or places at risk the health and safety of other children in care; or
- (d) There is a risk that the child's illness or condition will spread to other children or individuals.

(5) Unless covered by an individual care plan or protected by the ADA, an ill child, staff member, or other individual must be sent home or isolated from children in care if he or she has:

- (a) A fever 101 degrees Fahrenheit for children over two months (or 100.4 degrees Fahrenheit for an infant younger than two months) by any method, and behavior change or

other signs and symptoms of illness (including sore throat, earache, headache, rash, vomiting, diarrhea);

(b) Vomiting two or more times in the previous twenty-four hours;

(c) Diarrhea where stool frequency exceeds two stools above normal per twenty-four hours for that child or whose stool contains more than a drop of blood or mucus;

(d) A rash not associated with heat, diapering, or an allergic reaction;

(e) Open sores or wounds discharging bodily fluids that cannot be adequately covered with a waterproof dressing or mouth sores with drooling;

(f) Lice, ringworm, or scabies. Individuals with head lice, ringworm, or scabies must be excluded from the child care premises beginning from the end of the day the head lice or scabies was discovered. The provider may allow an individual with head lice or scabies to return to the premises after receiving the first treatment; or

(g) A child who appears severely ill, which may include lethargy, persistent crying, difficulty breathing, or a significant change in behavior or activity level indicative of illness.

(6) At the first opportunity, but in no case longer than twenty-four hours of learning that an enrolled child, staff member, volunteer or household member has been diagnosed by a health care professional with a contagious disease listed in WAC 246-110-010(3), as now and hereafter amended, an early learning provider must provide written notice to the department, the local health jurisdiction, and the parents or guardians of the enrolled children.

(7) An early learning provider must not take ear or rectal temperatures to determine a child's body temperature.

(a) Providers must use developmentally appropriate methods when taking infant or toddler temperatures (for example, digital forehead scan thermometers or underarm auxiliary methods);

(b) Oral temperatures may be taken for preschool through school-age children if single-use covers are used to prevent cross contamination; and

(c) Glass thermometers containing mercury must not be used.

(8) An early learning provider may readmit a child, staff member, volunteer or household member into the early learning program area with written permission of a health care provider or health jurisdiction stating the individual may safely return after being diagnosed with a contagious disease listed in WAC 246-110-010(3), as now and hereafter amended.

NEW SECTION

WAC 170-300-0210 Immunizations and exempt children. (1) Before attending an early learning program, a child must be vaccinated against or show proof of acquired immunity for the vaccine-preventable disease, pursuant to chapter 246-105 WAC, as now and hereafter amended. An early learning provider may accept children without proof of vaccinations or immunity as otherwise indicated in this section.

(2) An early learning provider must receive for each enrolled child:

(a) A current and complete department of health certificate of immunization status (CIS) or certificate of exemption (COE) or other department of health approved form, pursuant to WAC 246-105-050, as now and hereafter amended; or

(b) A current immunization record from the Washington state immunization information system (WA IIS).

(3) To accept a child who is not current with their immunizations, an early learning provider must give written notice to that child's parent or guardian stating the child may be accepted if the immunizations are completed consistent with chapter 246-105 WAC and:

(a) Prior to enrollment the parent or guardian provides written proof the child is scheduled to be immunized; or

(b) The parent or guardian provides a signed and dated statement detailing when the child's immunizations will be brought up to date.

(4) An early learning provider must maintain and update each child's records relating to immunizations or exemptions, or plans to bring immunizations current. These records must be available in the licensed space or easily accessible for review by department licensors, health specialists, and health consultants.

(5) An early learning provider may accept homeless or foster children into care without the records listed in this section if the child's family, case worker, or health care provider offers written proof that he or she is in the process of obtaining the child's immunization records.

(6) An early learning provider shall exclude a child from care according to the criteria listed in WAC 246-105-080.

(7) If an outbreak of a vaccine-preventable disease occurs within an early learning program, an early learning provider must notify the parents or guardians of children exempt from immunization for that disease and children without vaccination documents. A provider may exclude the child from the child care premises for the duration of the outbreak of that vaccine-preventable disease.

(8) An early learning provider may have a written policy stating children exempted from immunization by their parent or guardian will not be accepted into care unless that exemption is due to an illness protected by the ADA or WLAD or by a completed and signed COE.

NEW SECTION

WAC 170-300-0215 Medication. (1) **Managing medication.** A medication management policy must include, but is not limited to, safe medication storage, reasonable accommodations for giving medication, mandatory medication documentation, and forms pursuant to WAC 110-300-0500.

(2) **Medication training.** An early learning provider must not give medication to a child if the provider has not successfully completed:

(a) An orientation about the early learning program's medication policies and procedures;

(b) The department standardized training course in medication administration that includes a competency assessment pursuant to WAC 110-300-0106(10) or equivalent training; and

(c) If applicable, a training from a child's parents or guardian (or an appointed designee) for special medical procedures that are part of a child's individual care plan. This training must be documented and signed by the provider and the child's parent or guardian (or designee).

(3) **Medication administration.** An early learning provider must not give medication to any child without written and signed consent from that child's parent or guardian, must administer medication pursuant to directions on the medication label, and using appropriate cleaned and sanitized medication measuring devices.

(a) An early learning provider must administer medication to children in care as follows:

(i) **Prescription medication.** Prescription medication must only be given to the child named on the prescription. Prescription medication must be prescribed by a health care professional with prescriptive authority for a specific child. Prescription medication must be accompanied with medication authorization form that has the medical need and the possible side effects of the medication. Prescription medication must be labeled with:

(A) A child's first and last name;

(B) The date the prescription was filled;

(C) The name and contact information of the prescribing health professional;

(D) The expiration date, dosage amount, and length of time to give the medication; and

(E) Instructions for administration and storage.

(ii) **Nonprescription oral medication.** Nonprescription (over-the-counter) oral medication brought to the early learning program by a parent or guardian must be in the original packaging.

(A) Nonprescription (over-the-counter) medication needs to be labeled with child's first and last name and accompanied with medication authorization form that has the expiration date, medical need, dosage amount, age, and length of time to give the medication. Early learning providers must follow the instructions on the label or the parent must provide a medical professional's note; and

(B) Nonprescription medication must only be given to the child named on the label provided by the parent or guardian.

(iii) **Other nonprescription medication:** An early learning provider must receive written authorization from a child's parent or guardian and health care provider with prescriptive authority prior to administering if the item does not include age, expiration date, dosage amount, and length of time to give the medication:

(A) Vitamins;

(B) Herbal supplements;

(C) Fluoride supplements;

(D) Homeopathic or naturopathic medication; and

(E) Teething gel or tablets (amber bead necklaces are prohibited).

(iv) **Nonmedical items.** A parent or guardian must annually authorize an early learning provider to administer the following nonmedical items:

(A) Diaper ointments (used as needed and according to manufacturer's instructions);

(B) Sunscreen;

(C) Lip balm or lotion;

(D) Hand sanitizers or hand wipes with alcohol, which may be used only for children over twenty-four months old; and

(E) Fluoride toothpaste for children two years old or older.

(v) An early learning provider may allow children to take his or her own medication with parent or guardian authorization. The early learning staff member must observe and document that the child took the medication.

(vi) An early learning provider must not give or permit another to give any medication to a child for the purpose of sedating the child unless the medication has been prescribed for a specific child for that particular purpose by a qualified health care professional.

(b) Medication documentation (excluding nonmedical items). An early learning provider must keep a current written medication log that includes:

(i) A child's first and last name;

(ii) The name of the medication that was given to the child;

(iii) The dose amount that was given to the child;

(iv) Notes about any side effects exhibited by the child;

(v) The date and time of each medication given or reasons that a particular medication was not given; and

(vi) The name and signature of the person that gave the medication.

(c) Medication must be stored and maintained as directed on the packaging or prescription label, including applicable refrigeration requirements. An early learning provider must comply with the following additional medication storage requirements:

(i) Medication must be inaccessible to children;

(ii) Controlled substances must be locked in a container or cabinet which is inaccessible to children;

(iii) Medication must be kept away from food in a separate, sealed container; and

(iv) External medication (designed to be applied to the outside of the body) must be stored to provide separation from internal medication (designed to be swallowed or injected) to prevent cross contamination.

(d) An early learning provider must return a child's unused medication to that child's parent or guardian. If this is not possible, a provider must follow the Food and Drug Administration (FDA) recommendations for medication disposal.

(e) An early learning provider must not accept or give to a child homemade medication, such as diaper cream or sunscreen.

NEW SECTION

WAC 170-300-0220 Bathroom space and toilet training. (1) An early learning provider must provide at least one indoor bathroom in the licensed space that has the following:

(a) One working flush toilet.

(i) Toilets must be an appropriate height and size for enrolled children. A platform may be used to accommodate the height and size of children. Platforms must be easily cleanable and resistant to moisture and slipping.

(ii) Center early learning programs licensed after this chapter becomes effective must have one working flush toilet for every fifteen children and staff. A child in diapers does not count for purposes of toilet calculations until the child begins toilet training.

(iii) Toilets for staff may be located outside of licensed space on the premises.

(b) One working sink and faucet.

(i) Sinks and faucets must be an appropriate height and size for children. A platform may be used to accommodate the height and size of children. Platforms must be easily cleanable and resistant to moisture and slipping.

(ii) A faucet used for handwashing must provide warm running water.

(iii) Sinks and faucets must be located inside the bathroom or immediately outside the bathroom.

(iv) Sinks and faucets for staff may be outside of licensed space on the early learning premises.

(v) Water controls on bathroom sinks must be accessible for the intended user.

(vi) Bathroom sinks must not be used as a drinking source or for food preparation.

(vii) Center early learning programs must have one working sink and faucet for every fifteen children and staff.

(c) A means of providing privacy for children who demonstrate the need for privacy while toileting;

(d) A toilet paper dispenser for each toilet that is appropriate for the height and size of children;

(e) An operable window or exhaust fan; and

(f) An easily cleanable floor.

(i) Floors must have a washable surface;

(ii) Be resistant to moisture; and

(iii) Cleaned and disinfected daily, or more often as needed.

(2) If an early learning program space is equipped with a bathtub or shower, the provider must:

(a) Only give a bath or shower to a child with consent from that child's parent or guardian;

(b) Only use the bath or shower:

(i) To clean a child after an accident, such as diarrhea or vomiting; or

(ii) During overnight care hours.

(c) Ensure the area around a bathtub or shower is resistant to slipping or equipped with a conveniently located grab bar; and

(d) Keep the bathtub or shower inaccessible to children when not in use by children (in center early learning programs only).

(3) An early learning provider must discuss toilet training procedures with that child's parent or guardian when a child is ready for training. A provider must facilitate the toilet training process by encouraging the child with:

(a) Positive reinforcement (which may not include food items);

(b) Culturally sensitive methods;

(c) Developmentally appropriate methods; and

(d) A toilet training routine developed in agreement with the parent or guardian.

(4) An early learning provider may use a modified toilet seat if it is cleaned and disinfected using a safe disinfectant at least daily or more often if soiled.

(5) Toilet training equipment must be cleaned in a sink not used for food preparation, handwashing, or clean up.

(a) A family home early learning program may use a bathtub or multipurpose sink to clean toilet training equipment unless it is used for food preparation.

(b) The sink, basin, or bathtub in a family home early learning program used to clean toilet training equipment must be cleaned and disinfected after each use with a safe disinfectant.

(6) If a child is developmentally ready, and an early learning provider uses a stand-up diapering procedure, it must be done in the bathroom or a diaper changing area.

NEW SECTION

WAC 170-300-0221 Diaper changing areas and disposal. (1) A center early learning provider must have a designated diaper changing area, including stand-up diapering, for each classroom or for every age grouping of children who require diapering. Only one diaper changing area is required at a family home early learning provider.

(a) A diaper changing area must:

(i) Be separate from areas where food is stored, prepared, or served;

(ii) Have a sink with hot and cold running water, not used for food preparation and clean up;

(iii) Have a sturdy surface or mat that:

(A) Is not torn or repaired with tape;

(B) Is washable;

(C) Has a moisture resistant surface that is cleanable; and

(D) Is large enough to prevent the area underneath the diaper changing area from being contaminated with bodily fluids.

(iv) Be on moisture resistant, washable material that horizontally or vertically surrounds and extends at least two feet from the diaper changing station and handwashing area; and

(v) Be uncluttered and not used for storage of any items not used in diapering a child.

(b) An early learning provider must not leave a child unattended on the diaper changing surface or mat during the diaper changing process;

(c) An early learning provider must not use safety belts on diaper changing tables because they are neither cleanable nor safe; and

(d) An early learning provider must post an easily viewable diaper changing procedure at each station and must follow each step described in the procedure.

(2) If an early learning provider uses a diaper changing station, the station must:

(a) Have a handwashing sink within arm's reach of, or be readily accessible to, an early learning provider to prevent cross contamination; and

(b) Be on moisture resistant, washable material that horizontally or vertically surrounds and extends at least two feet from the diaper changing station and handwashing area; and either:

(i) A table or counter large enough to accommodate the length of a child, with a protective barrier at least three and one-half inches high on all sides from the surface the child lays on; or

(ii) A wall mounted diaper changing station that meets manufacturer guidelines and specifications in addition to the requirements of this section.

(3) If an early learning provider uses reusable or cloth diapers, the diapers must:

(a) Not be rinsed;

(b) Be placed in a securely sealed moisture impervious bag;

(c) Be stored in a separate disposal container; and

(d) Be delivered to a commercial laundry service or given to the child's parent or guardian at least daily.

(4) An early learning provider must provide a container designated for disposing of soiled diapers and diapering supplies only. The diaper disposal container must be:

(a) Hands-free and covered with a lid to prevent cross contamination;

(b) Lined with a disposable plastic trash bag; and

(c) Within arm's length of the diaper changing area.

NEW SECTION

WAC 170-300-0225 Pets and animals. (1) An early learning provider may have pets or other animals on the early learning program premises.

(2) If an early learning provider keeps pets or animals on the early learning program premises:

(a) The provider must have and follow a pet and animal policy; and

(b) Provide written notice to children's parents and guardians.

(3) Pets or other animals that have contact with children must:

(a) Have all required vaccinations, pursuant to local and county regulations;

(b) Show no signs of illness, disease, worms, or parasites. If these symptoms appear, the pet or animal must be removed from the licensed space until appropriately treated for the condition; and

(c) Be nonaggressive. If the pet or animal exhibits aggressive behavior, the pet or animal must be removed from the licensed space.

(4) An early learning provider must:

(a) Make reptiles and amphibians that are not part of the early learning program or activities inaccessible to enrolled children due to the risk of salmonella or other diseases;

(b) Require that chickens, ducks, turkeys, doves, pigeons, or other birds are caged, cooped, or penned outside early learning program space when children are in care, at a distance that prevents children from having direct access to the enclosures or waste;

(c) Cage indoor birds;

(d) Prevent debris from spilling out of a container or cage used for pets and animals, if applicable;

(e) Not allow pets and animals in the kitchen during food preparation and ensure pets and animals do not come into

contact with food, food preparation, or serving areas while food is served;

(f) Not use a sink that is used for cleaning food or utensils to clean pet supplies;

(g) Not allow animals in rooms or areas typically used by infants or toddlers (center early learning programs only); and

(h) Store pet and animal medication separate from human medication.

(5) An early learning provider must require:

(a) Animals and pets to go to the bathroom outdoors if the animals do not have a designated indoor litter area. The designated outdoor area must be inaccessible to children in care;

(b) Pet containers and cages to be cleaned and disinfected at least weekly, or more often if needed;

(c) Litter boxes to be kept inaccessible to children and cleaned daily;

(d) Animal waste and litter to be disposed of as soon as possible and the area disinfected;

(e) Animal waste to be inaccessible to children;

(f) Animal waste to be disposed of in a manner that prevents children from coming into contact with the waste material;

(g) Animal waste, including fish tank water, must be disposed of in unlicensed space or toilets or custodial sinks. Toilets and custodial sink areas must be washed, rinsed, and disinfected after disposal; and

(h) Indoor and outdoor play space to be cleaned and disinfected where animal or bird waste or vomit is present. This must be done as soon as possible or prior to access by children.

NEW SECTION

WAC 170-300-0230 First-aid supplies. (1) An early learning provider must keep a complete first-aid kit in the licensed space, on any off-site trip, and in a vehicle used to transport children in care. A first-aid kit must:

(a) Be stored in a location that is easily accessible to staff;

(b) Be inaccessible to children;

(c) Be separate from food or chemicals;

(d) Be kept clean and sanitary;

(e) Be stored in a manner that prevents contamination; and

(f) Have sufficient supplies for the number of enrolled children and staff consistent with the early learning program's licensed capacity, or sufficient supplies for each room in the licensed space.

(2) A first-aid kit must include:

(a) Disposable nonporous protective nonlatex gloves;

(b) Adhesive bandages of various sizes;

(c) Small scissors;

(d) Tweezers;

(e) An elastic wrapping bandage;

(f) Sterile gauze pads;

(g) Ice packs;

(h) A disposable or mercury free thermometer that uses disposable sleeves, or is cleaned and sanitized after each use;

(i) A sling, or a large triangular bandage;

(j) Adhesive tape;

(k) A CPR barrier with a one-way valve or both an adult and pediatric CPR mask with a one-way valve;

(l) A current first-aid manual; and

(m) Hand sanitizer (for adult use only).

NEW SECTION

WAC 170-300-0236 Safe drinking water. (1) An early learning program's drinking water must:

(a) Be offered multiple times throughout the day and be readily available to children at all times;

(b) Be offered in outdoor play areas, in each classroom for centers, and in the licensed space for family homes;

(c) Be served in a manner that prevents contamination;

(d) Not be obtained from a handwashing sink used with toileting or diapering; and

(e) Be served fresh daily or more often as needed.

(2) Drinking fountains at an early learning program must:

(a) Not be attached to handwashing sinks or disabled;

(b) Not be located in bathrooms;

(c) Not be a "bubble type" fountain (the water flow must form an arch);

(d) Be cleaned and sanitized daily, or more often as needed; and

(e) Be located above water impervious flooring.

CLEANING AND SANITATION

NEW SECTION

WAC 170-300-0240 Clean and healthy environment.

(1) Early learning program premises and program equipment must be clean and sanitary.

(2) Hard surfaces in early learning programs including, but not limited to, floors (excluding carpet), walls, counters, bookshelves, and tables must be smooth and easily cleanable.

(a) A cleanable surface must be:

(i) Designed to be cleaned frequently and made of sealed wood, linoleum, tile, plastic, or other solid surface materials;

(ii) Moisture resistant; and

(iii) Free of chips, cracks, and tears.

(b) An early learning provider must have at least twenty-four inches of moisture resistant and cleanable material or barrier around sinks, drinking fountains, and toilets.

(c) An early learning provider must clean all surfaces before sanitizing or disinfecting. Surfaces must be cleaned with a soap and water solution or spray cleaner and rinsed. If using a spray cleaner, directions on the label must be followed.

(d) Aerosol sprays and air fresheners must not be used during child care hours.

(e) If a bleach solution is used for sanitizing or disinfecting, an early learning provider must use one that is fragrance-free and follow department of health's current guidelines for mixing bleach solutions for child care and similar environments.

(f) If an early learning provider uses a product other than bleach, including wipes, to sanitize or disinfect, the product must be:

- (i) Approved by the department prior to use;
- (ii) Used by trained staff only;
- (iii) Registered with the EPA and have safety data sheets (SDSs) available;
- (iv) Used in accordance with the manufacturer's label, which must include:
 - (A) Directions for use;
 - (B) A description of the safety precautions, procedures, and equipment that must be used for mixing the substitute product concentration, if applicable;
 - (C) A description of the safety precautions and procedures if the substitute product contacts skin or is inhaled, if applicable; and
 - (D) A description of the procedures and safety precautions for rinsing cleaned areas and cleaning equipment, if applicable.
- (v) Labeled as safe to use on food surfaces if the product will be used to sanitize:
 - (A) Food contact surfaces; or
 - (B) Items such as eating utensils or toys used by the child or put into the child's mouth; and
- (vi) Fragrance-free.

NEW SECTION

WAC 170-300-0241 Cleaning schedules. (1) An early learning provider must develop and follow a cleaning schedule that includes:

- (a) Food preparation areas, tables and chairs, high chairs, and food service counters, which must be cleaned and sanitized before and after each meal and snack with single use paper towels or one-time use wiping cloths;
- (b) Eating utensils, bottles, drinking equipment, and dishes, which must be cleaned and sanitized after each use;
- (c) Pacifiers, which:
 - (i) Must be cleaned and sanitized after each use by washing and boiling the pacifier or washing the pacifier in the dishwasher; or
 - (ii) May be reused by an individual child if they have been rinsed after each use and stored in a device or container that prevents contamination. Both the pacifier and the storage device or container must be cleaned and sanitized daily;
- (d) Appliances used to prepare food, which must be cleaned after each use and sanitized daily or more often as needed;
- (e) Refrigerators, which must be cleaned and sanitized monthly or more often as needed;
- (f) Freezers, which must be cleaned and sanitized quarterly or more often as needed;
- (g) Toys, which must be cleaned and sanitized as follows:
 - (i) Infant and toddler toys must be cleaned and sanitized at least daily or more often as needed;
 - (ii) All other toys must be cleaned and sanitized weekly or more often as needed; and
 - (iii) When a toy comes into contact with a child's mouth or bodily fluids it must be removed from use until it can be cleaned and sanitized prior to reuse; and
 - (h) Furniture and equipment, which must be cleaned monthly or more often as needed.

- (2) Machine washable clothes provided by the early learning program must be laundered as needed.
- (3) Sleeping equipment must be:
 - (a) Cleaned and sanitized after each use if used by more than one child; or
 - (b) Cleaned and sanitized weekly or more often as needed if assigned to only one child.
- (4) Bedding must be:
 - (a) Laundered and sanitized after each use if used by more than one child; or
 - (b) Laundered and sanitized weekly or more often as needed if assigned to only one child.
- (5) Sinks that are not used for handwashing after toileting, diapering, or food preparation must be cleaned and sanitized daily or more often as needed.
- (6) Toileting and diaper changing areas including, but not limited to, toilets, counters, sinks, and floors must be cleaned and disinfected daily or more often as needed.
- (7) Diaper changing tables and changing pads must be cleaned and disinfected between children, even if using a nonabsorbent covering that is discarded after each use.
- (8) Garbage cans and receptacles must be emptied on a daily basis and cleaned and disinfected as needed.
- (9) Diaper receptacles must be emptied, cleaned, and disinfected daily or more often as needed. Contents of a diaper receptacle must be removed from the licensed space, and replaced with a new liner at least daily or more often if odor is present.
- (10) Floors must be cleaned by either sweeping or vacuuming at least once per day or more often as needed. Moisture resistant flooring must be cleaned and sanitized at least once per day or more often as needed.
- (11) Large area rugs or installed carpet must be cleaned at least once every six months, or when visible dirt or stains are present, using a carpet shampoo machine, steam cleaner, or other method that minimizes the exposure of children in care to pathogens and allergens.
 - (a) An early learning provider must not use dry shampoos or dry chemical sanitizers or disinfectants, unless approved by the department.
 - (b) If caring for infants, a provider must either place a safe and clean material over large rugs or carpet, or clean rugs or carpet at least once per month or more often if visible stains are present.
- (12) Small area rugs must be shaken outdoors or vacuumed daily, and laundered as needed.
- (13) Carpets or area rugs soiled with bodily fluids must be cleaned and disinfected with high heat or an EPA registered product. An early learning provider must limit exposure to blood and body fluids during cleanup.
- (14) Children must not:
 - (a) Be present when carpets are cleaned or vacuumed unless the provider is spot vacuuming, the vacuum has a HEPA filter, and children are not within the immediate area; or
 - (b) Use or play on or near carpet areas until dry.

NEW SECTION**WAC 170-300-0245 Laundry and equipment.** (1)

Laundry and laundry equipment at an early learning program must be inaccessible to children and separated from areas where food is prepared to prevent cross contamination.

(2) Dirty or soiled laundry must be:

- (a) Kept separate from clean laundry;
- (b) Cleaned with laundry soap or detergent;
- (c) Rinsed; and
- (d) Sanitized:

(i) With bleach or a similar sanitizer registered by the EPA; or

(ii) By using a "sanitize" setting on a washing machine or dryer that reaches at least 140 degrees Fahrenheit.

(3) A dryer must be vented to the outside of the building or following the manufacturer's specifications.

NEW SECTION

WAC 170-300-0250 Private septic systems. (1) If an early learning program is served by a private septic system, the septic system must be designed, constructed, and maintained in accordance with state and local health jurisdiction requirements.

(a) A private septic system must be inspected by a septic system maintenance service provider approved by the local health jurisdiction and monitored on a routine basis. Any deficiencies noted in an inspection report must be corrected with the necessary permits and inspections.

(b) The most recent private septic system pumping and inspection records must be kept on the licensed premises or in the program's administrative office.

(c) If an early learning provider does not have the documentation described in (b) of this subsection, the provider must obtain from the state, local health jurisdiction, or a department approved private company such documentation within six months of the date this section becomes effective.

(d) An early learning provider must notify the department and local health jurisdiction if there is a problem, concern, or malfunction with a private septic system.

(e) If a private septic system problem, concern, or malfunction interferes with the proper care of children and an approved alternative is not available, the state, local health jurisdiction, or department may require an early learning program to close until the system is inspected, repaired, and approved by the local health jurisdiction.

(2) Pursuant to WAC 110-300-0146(2), playground design must not:

(a) Interfere with access to or the operation of a private septic system, including a private septic system's drain field and tanks; or

(b) Be located or placed in a way that impacts the private septic system's drain field or tanks as determined by local officials.

NEW SECTION

WAC 170-300-0255 Pest control. (1) An early learning provider must take appropriate steps to safely prevent or control pests that pose a risk to the health and safety of adults and

children in and around the licensed space. Pest control steps must include:

(a) **Prevention.** A provider must take steps to prevent attracting pests including, but not limited to, identifying and removing food and water sources that attract pests.

(b) **Inspection.** Indoor and outdoor areas in and around the licensed space must be inspected for evidence of pests. A provider must document the date and location if evidence is found.

(c) **Identification.** Pests found in the licensed space must be identified and documented so the pest may be properly removed or exterminated.

(d) **Management.** A provider must document steps taken to remove or exterminate the pests if found in the licensed space.

(e) **Notification.** If pesticides are used, the early learning provider must notify the parents or guardians of enrolled children what pesticide will be applied and where it will be applied no less than forty-eight hours before application, unless in cases of emergency (such as a wasp nest).

(f) **Application.** Pesticide must be applied to early learning program space when children are not present. When pesticide is applied, center providers must comply with chapter 17.21 RCW and family home providers must comply with the pesticide manufacturer's instructions.

(2) An early learning provider must have a pest control policy that emphasizes prevention and natural, nonchemical, low-toxicity methods where pesticides or herbicides are used as a last resort (i.e., integrated pest management).

NEW SECTION**WAC 170-300-0260 Storage of hazardous and maintenance supplies.** (1) An early learning provider must ensure all poisonous or dangerous substances including, but not limited to, fuels, solvents, oils, laundry, dishwasher, other detergents, sanitizing products, disinfectants and items labeled "keep out of reach of children" are stored:

(a) In a location that is inaccessible to children;

(b) Separate and apart from food preparation areas, food items, and food supplies;

(c) In their original containers or clearly labeled with the name of the product if not in the original container; and

(d) In compliance with the manufacturer's directions (including, not storing products near heat sources).

(2) Storage areas and storage rooms must:

(a) Be inaccessible to children;

(b) Have locking doors or other methods to prevent child access;

(c) Have moisture resistant and easily cleanable floors;

(d) Have a designated maintenance or janitorial utility sink, or another method to dispose of wastewater (kitchen sinks must not be used for disposal of wastewater); and

(e) Be kept clean and sanitary.

(3) Center early learning program space with storage areas and rooms that contain chemicals, utility sinks, or wet mops must be ventilated to the outdoors with an exterior window or mechanical ventilation to prevent the buildup of odors, fumes, or other hazards.

(4) Family home providers must store and maintain chemicals and wet mops in a manner that minimizes the buildup of odors, fumes, or other hazards.

(5) Saws, power tools, lawn mowers, toilet plungers, toilet brushes, and other maintenance and janitorial equipment must be inaccessible to children.

SLEEP AND REST

NEW SECTION

WAC 170-300-0265 Sleep, rest, and equipment. (1)

An early learning provider must offer a supervised daily rest period for children preschool age and younger who remain in care for more than six hours per day, or who show a need for rest.

(2) An early learning provider must provide quiet activities for children who do not require rest. Quiet activities must be minimally disruptive to sleeping children.

(3) An early learning provider must communicate a child's sleep needs and patterns with that child's parent or guardian.

(4) An early learning provider must not place children directly on the floor to rest or sleep.

(5) For children not using cribs or playpens, an early learning provider must provide developmentally appropriate mats, cots, or other sleep equipment made of water resistant material that can be cleaned and sanitized.

(6) Mats, cots, and other sleep equipment used in an early learning program must be:

(a) In good condition, have no tears or holes, and have no repairs with tape;

(b) Cleaned, sanitized, and air dried at least once per week or more often as needed if used by only one child, or after each use if used by more than one child; and

(c) Stored so sleeping surfaces are not touching each other unless cleaned and sanitized after each use.

(7) Floor mats designed for sleeping and mattresses must be at least one inch thick.

(8) Floor mats must be spaced apart from other floor mats, cots, and mattresses to reduce germ exposure and allow early learning providers' access to each child during sleep time as follows:

(a) There must be at least eighteen inches on each side between each floor mat, cot, or mattress; and

(b) Floor mats, cots, and mattresses must be arranged so children are head to toe, or toe to toe.

(9) Each child's bedding must:

(a) Have a clean sheet or blanket to cover the sleeping surface and a clean blanket for the child that is suitable given the child's size and room temperature;

(b) Be laundered weekly or more often if soiled, or laundered daily if used by more than one child; and

(c) Be stored separately from bedding used by another child, unless it is cleaned and sanitized after each use.

(10) An early learning provider must not allow children less than six years of age to use loft style beds or upper bunks of bunk beds.

NEW SECTION

WAC 170-300-0270 Overnight care. (1) An early learning provider must be approved by the department to provide overnight care between nine o'clock at night and five o'clock in the morning when any enrolled child sleeps for three or more hours at the program.

(2) If approved by the department to provide overnight care, an early learning provider must supply every child an individual bed or other sleep equipment that:

(a) Is safe and in good working condition;

(b) Is made of moisture resistant material that can be cleaned and sanitized;

(c) Meets the child's developmental needs; and

(d) Is stored so sleeping surfaces are not touching each other unless cleaned and sanitized after each use.

(3) Each child's bedding must:

(a) Have a clean sheet or blanket to cover the sleeping surface and a clean cover for the child except for infants;

(b) Be laundered weekly or more often if soiled. Bedding must be laundered daily if used by different children; and

(c) Be stored separately from bedding used by another child, unless it is cleaned and sanitized after each use.

(4) An early learning provider must:

(a) Supervise children until they are asleep, except where children demonstrate the need for privacy to change clothes and can safely do so; and

(b) Have department approval prior to using night latches, deadbolts, or security chains.

(5) An early learning provider who sleeps while children are in overnight care must:

(a) Have written permission and documentation that parents are aware that the provider is sleeping while their children are in care and have read the facilities policies and procedures for overnight care;

(b) Stay awake until all children are asleep or returning to sleep;

(c) Remain on the same floor level as sleeping children at all times;

(d) Sleep in the same room with infants and toddlers;

(e) Be physically available and responsive, available to immediately respond to a child's needs;

(f) Have alarms to alert them if a child should leave the room;

(g) Have monitoring devices to assist in hearing and visibly checking on children in each room used for sleeping; and

(h) Be awake for the arrival and departure of each child in overnight care.

(6) An early learning provider who accepts infants for overnight care must comply with all safe sleep rules pursuant to WAC 110-300-0291 for at least the first fifteen nights a new infant is enrolled in that program. A provider may sleep while the infant sleeps during overnight care if:

(a) The provider continues to comply with WAC 110-300-0291 (1)(b), (c), (f), (g), (h), (i) and (2);

(b) Once that provider has become familiar with the sleep routines and patterns of that infant; and

(c) The provider has observed no apparent health or safety risks while the infant sleeps.

INFANT AND TODDLER

NEW SECTION

WAC 170-300-0275 Infant and toddler care. (1) An early learning program may care for infants if the department inspects the program space and approves care for infants:

- (a) Prior to issuing the program its license; or
- (b) Prior to caring for infants if the program has not previously done so.

(2) An early learning provider working directly with infants must complete the department required infant safe sleep training pursuant to WAC 110-300-0106(8).

(3) An early learning provider must not use or allow the use of wheeled baby walkers.

(4) A center early learning provider licensed to care for any infant shall employ or contract with a child care health consultant to provide health consultation to support the practices of staff working with infants and to support the needs of individual infants.

(5) A center early learning provider shall enter into a department approved written agreement for services with a child care health consultant.

(a) The child care health consultant must be a currently licensed registered nurse who:

(i) Has worked in pediatrics or public health in the past five years or has taken or taught classes in pediatric nursing at the college level in the past five years;

(ii) Has experience with state licensing and public health requirements; and

(iii) Attests in writing to knowledge and experience sufficient to provide service consistent with the health consultant competencies described in the most current version of *Caring for Our Children*.

(b) The child care health consultant must be available, or make available a designee who meets the requirements of subsection (2)(a) of this section, for consultation by phone as needed.

(6) A center early learning provider shall ensure that the child care health consultant:

(a) Conducts at least one on-site visit monthly, if an infant is enrolled, during which the consultant:

(i) Observes and assesses staff knowledge of infant health, development, and safety and offers support through training, consultation, or referral;

(ii) Observes and assesses classroom health practices including, but not limited to, infection control including cleaning, sanitizing, and disinfecting, and provides technical assistance to correct any practices of concern;

(iii) Observes and assesses behavior, development, and health status of individual infants in care and makes recommendations to staff or parents or guardians including if further assessment is recommended, as requested or otherwise determined appropriate.

(b) Provides a dated, signed, written summary to the early learning provider for each visit that includes topics discussed with parents or staff, any areas of concern related to discussion, observation, assessment, or screening outcomes; and

(c) Reports each visit to the department.

(7) A center early learning provider must keep on-site a copy of the child care health consultant's written reports along with any notes, recommended follow up, and any actions taken to address concerns identified.

(8) If a center early learning provider is unable to independently employ or contract with a child care health consultant within thirty calendar days of enrolling an infant, the provider shall contact the department for assistance. The department shall assist the provider obtain the services of a child care health consultant or may grant a waiver until the services can be secured.

NEW SECTION

WAC 170-300-0280 Bottle preparation. (1) An early learning provider may allow parents to bring from home filled bottles clearly labeled with the date and infant's first and last name for daily use. Bottles must be immediately refrigerated.

(2) A bottle preparation area must:

(a) Include a sink; and

(b) Be located at least eight feet from any diaper changing tables or counters and sinks used for diaper changing; or

(c) Be physically separated from the diaper changing area by means of a barrier to prevent cross contamination. If a barrier is used, it must be:

(i) Smooth and easily cleanable;

(ii) Sealed, if made of wood;

(iii) Moisture resistant;

(iv) Extend at least twenty-four inches in height from the counter or changing surface; and

(v) Solid without cracks, breaks or separation.

(3) To prepare bottles, an early learning provider must:

(a) Clean bottles and nipples before use using warm soapy water and a bottlebrush and sanitize by boiling in hot water for one minute, or pursuant to WAC 110-300-0198;

(b) Clean and sanitize the sink used for preparing bottles;

(c) Obtain water from a sink used for bottle or food preparation only, or from another approved source, such as bottled water. Water from a handwashing or diaper changing sink may not be used for bottle preparation;

(d) Use bottles and nipples in good repair (with no cracks);

(e) Use glass or stainless steel bottles, or use plastic bottles labeled with "1," "2," "4," or "5" on the bottle. A plastic bottle must not contain the chemical bisphenol-A or phthalates;

(f) Prepare infant formula according to manufacturer's directions and never serve infant formula past the expiration date on the container;

(g) Not heat a bottle in a microwave;

(h) Warm bottles under running warm water, in a container of water, or in a bottle warmer;

(i) Keep bottle nipples covered if bottles are prepared ahead;

(j) Store prepared and unserved bottles in the refrigerator;

(k) Not allow infants or toddlers to share bottles or cups when in use; and

(l) Throw away contents of any formula bottle not fully consumed within one hour (partially consumed bottles must not be put back into the refrigerator).

NEW SECTION

WAC 170-300-0281 Breast milk. (1) When a parent or guardian provides breast milk, an early learning provider must:

- (a) Immediately refrigerate or freeze the breast milk;
- (b) Label the breast milk container with the child's first and last name and the date received;
- (c) Store frozen breast milk at zero degrees Fahrenheit or less, and in a closed container to prevent contamination; and
- (d) Keep frozen breast milk for no more than thirty days upon receipt and return any unused frozen breast milk to the parent after thirty days.

(2) Frozen breast milk must be kept in the refrigerator at a temperature of 39 degrees Fahrenheit for up to twenty-four hours after thawed.

(3) Thawed breast milk that has not been served within twenty-four hours must be labeled "do not use" and returned to the parent or guardian.

(4) An early learning provider must return any unused refrigerated, not been previously frozen, bottles or containers of breast milk to the parent at the end of the child's day, or label "do not use."

(5) An early learning provider must thaw frozen breast milk in the refrigerator, under warm running water, in a container with warm water, or in a bottle warmer.

(6) An early learning provider must not thaw or heat breast milk in a microwave oven or on the stove.

(7) An early learning provider must obtain parental consent prior to feeding infant formula to an otherwise breastfed infant.

NEW SECTION

WAC 170-300-0285 Infant and toddler nutrition and feeding. (1) An early learning provider must have and follow written policies on providing, preparing, and storing breast milk or infant formula and food.

(2) After consulting a parent or guardian, an early learning provider must implement a feeding plan for infants and toddlers that includes:

(a) A plan to support the needs of a breastfeeding mother and infant by:

- (i) Providing an area for mothers to breastfeed their infants; and
- (ii) Providing educational materials and resources to support breastfeeding mothers.

(b) Feeding infants and toddlers when hungry according to their nutritional and developmental needs, unless medically directed;

(c) Serving only breast milk or infant formula to an infant, unless the child's health care provider offers a written order stating otherwise; and

(d) When bottle feeding, an early learning provider must:

- (i) Test the temperature of bottle contents before feeding to avoid scalding or burning the child's mouth;

(ii) Hold infants and, when developmentally appropriate, toddlers to make eye contact and talk to them;

(iii) Stop feeding the infant or toddler when he or she shows signs of fullness; and

(iv) Not allow infants or toddlers to be propped with bottles or given a bottle or cup when lying down.

(e) Transitioning a child to a cup only when developmentally appropriate;

(f) Introducing age-appropriate solid foods no sooner than four months of age, based on an infant's ability to sit with support, hold his or her head steady, close his or her lips over a spoon, and show signs of hunger and being full, unless identified in written food plan pursuant to WAC 110-300-0190 or written medical approval;

(g) Not adding food, medication, or sweeteners to the contents of a bottle unless a health care provider gives written consent;

(h) Not serving one hundred percent juice or any sweetened beverages (for example, juice drinks, sports drinks, or tea) to infants less than twelve months old, unless a health care provider gives written consent, and helping prevent tooth decay by only offering juice to children older than twelve months from a cup;

(i) Increasing the texture of the food from strained, to mashed, to soft table foods as a child's development and skills progress between six and twelve months of age. Soft foods offered to older infants should be cut into pieces one-quarter inch or smaller to prevent choking;

(j) Allowing older infants or toddlers to self-feed soft foods from developmentally appropriate eating equipment;

(k) Placing infants or toddlers who can sit up on their own in high chairs or at an appropriate child-size table and chairs when feeding solid foods or liquids from a cup, and having an early learning provider sit with and observe each child eating. If high chairs are used, each high chair must:

(i) Have a base that is wider than the seat;

(ii) Have a safety device, used each time a child is seated, that prevents the child from climbing or sliding down the chair;

(iii) Be free of cracks and tears; and

(iv) Have a washable surface.

(l) Not leaving infants or toddlers more than fifteen minutes in high chairs waiting for meal or snack time, and removing a child as soon as possible once he or she finishes eating;

(m) Preventing infants or toddlers from sharing the same dish or utensil;

(n) Not serving any uneaten food from the serving container after the intended meal; and

(o) Not serving food to infants or toddlers using polystyrene foam (styrofoam) cups, bowls, or plates.

NEW SECTION

WAC 170-300-0290 Infant and toddler sleep, rest, and equipment. (1) For infants, an early learning provider must supply a single level crib, playpen, or other developmentally appropriate sleep equipment. Providers must not use sofas, couches, or adult-sized or toddler beds for infant sleeping.

(2) For toddlers, an early learning provider must supply a single level crib, playpen, toddler bed, or other developmentally appropriate sleep equipment. An early learning provider must allow toddlers to follow their own sleep patterns.

(3) Sleep equipment not covered in WAC 110-300-0265 must:

(a) Be approved by CPSC or ASTM International Safety Standards for use by infants and toddlers;

(b) Cribs must have a certificate of compliance, sticker, or documentation from the manufacturer or importer stating the crib meets 16 C.F.R. 1219 and 1220;

(c) Have a clean, firm, and snug-fitting mattress designed specifically for the particular equipment;

(d) Have a tight-fitted sheet that is designed for the sleep equipment;

(e) Have a moisture resistant and easily cleaned and sanitized mattress, if applicable. The mattress must be free of tears or holes and not repaired with tape;

(f) The sheet must be laundered at least weekly or more often, such as between uses by different children or if soiled;

(g) Cribs and playpens arranged side by side must be spaced at least thirty inches apart; and

(h) Cribs and playpens placed end to end must have a moisture resistant and easily cleanable solid barrier if spaced closer than thirty inches.

(4) An early learning provider must immediately remove sleeping children from car seats, swings, or similar equipment not designed for sleep unless doing so would put another enrolled child at risk.

(5) An early learning provider must consult with a child's parent or guardian before that child is transitioned from infant sleeping equipment to other sleep equipment.

(6) An early learning provider must transition children who are able to climb out of their sleeping equipment to developmentally appropriate sleep equipment. When parents do not agree with transitioning, the provider and parent will cocreate a transition plan.

NEW SECTION

WAC 170-300-0295 Infant and toddler programs and activities. (1) An early learning provider must support each infant and toddler's culture, language, and family.

(2) An early learning provider must ensure an adequate supply of age and developmentally appropriate program materials and equipment for infants and toddlers. Materials and equipment must meet individual, developmental, and cultural needs of children in care, and must be:

(a) Clean and washable or disposable;

(b) Nonpoisonous, free of toxins, and meet ASTM D-4236 labeling requirements for chronic health hazards;

(c) Large enough to prevent swallowing or choking;

(d) Safe and in good working condition;

(e) Child size;

(f) Accommodating to a range of abilities and special needs of enrolled children, if applicable;

(g) Accessible for children to find, use, and return independently; and

(h) Removed from the early learning premises as soon as a provider becomes aware an item has been recalled by CPSC.

NEW SECTION

WAC 170-300-0296 Infant and toddler development.

(1) An early learning provider must expose infants and toddlers to a developmentally appropriate curriculum.

(2) Developmentally appropriate curriculum may include, but is not limited to:

(a) Developing infant and toddler language and communication by:

(i) Talking and listening to children, encouraging soft infant sounds, naming objects, feelings, and desires, and describing actions;

(ii) Giving individual attention to children when needed;

(iii) Playing and reading with children;

(iv) Mirroring similar infant sounds and sharing a child's focus of attention;

(v) Communicating throughout the day and during feeding, changing, and cuddle times; and

(vi) Providing materials and equipment that promote language development and communication such as soft books, interactive storybook reading, rhymes and songs, and finger puppets.

(b) Developing infant and toddler physical and cognitive abilities by:

(i) Allowing each infant actively supervised tummy time throughout the day when the infant is awake;

(ii) Providing infants and toddlers freedom to explore and learn on their own on the floor;

(iii) Providing infants and toddlers access to active outdoor playtime. An early learning provider must enforce sun safety precautions for infants younger than six months old by keeping them out of the direct sunlight and limiting sun exposure when ultraviolet rays are strongest (typically from 10:00 a.m. to 2:00 p.m.); and

(iv) Encouraging infants and toddlers to play, crawl, pull up, and walk by using materials and equipment that promotes:

(A) Physical and cognitive activities, for example rattles, grasping and reaching toys, busy boxes, nesting cups, small push and pull toys, riding toys, balls, squeezable toys, books, dolls, press-together blocks, and limited use of equipment such as bouncers, swings, or boppies; and

(B) Spatial and numeracy understanding, for example counting toys, soft blocks and toys with different sizes such as measuring cups or spoons, and toys with different shapes and colors to help introduce sorting and categorization.

(c) Developing infant and toddler social and emotional abilities by:

(i) Providing social contact with infants and toddlers in addition to time spent feeding, diapering and bathing by playing with children, naming and acknowledging emotions, and encouraging peer interaction;

(ii) Immediately investigating cries or other signs of distress;

(iii) Providing comfort to an upset or hurt child;

- (iv) Positively responding to a child's verbal and nonverbal cues;
- (v) Intervening during negative peer interactions such as when a child grabs other children's toys, pulls hair, or bites;
- (vi) Providing physical stimulation through holding, cuddling, rocking, talking, singing, playing, carrying, and changing positions; and
- (vii) Providing materials and equipment that promote social and emotional activities such as pictures of children and adults exhibiting different emotions, pictures of infants and family members, dolls and soft toys, rattles, music, and dancing scarves.

INTERACTIONS AND CURRICULUM

Learning Supports

NEW SECTION

WAC 170-300-0300 Individual care plan. (1) An early learning provider must develop an individual care plan for each child with special needs and must notify the department when a child with special needs is enrolled or identified in the early learning program. Plans and documentation required under this section must:

- (a) Meet the requirements of this section;
 - (b) Be available for department review;
 - (c) Have written permission from a child's parent or guardian stating that a visiting health professional may provide services to the child at the early learning program, if applicable;
 - (d) Have verification that early learning program staff involved with a particular child has been trained on implementing the individual care plan for that child, if applicable;
 - (e) Be updated annually or when there is a change in the child's special needs; and
 - (f) Be kept in the child's file.
- (2) The individual care plan must be signed by the parent or guardian and may be developed using a department provided template.
- (a) The individual care plan must contain:
 - (i) The child's diagnosis, if known;
 - (ii) Contact information for the primary health care provider or other relevant specialist;
 - (iii) A list of medications to be administered at scheduled times, or during an emergency along with descriptions of symptoms that would trigger emergency medication;
 - (iv) Directions on how to administer medication;
 - (v) Allergies;
 - (vi) Food allergy and dietary needs, pursuant to WAC 110-300-0186;
 - (vii) Activity, behavioral, or environmental modifications for the child;
 - (viii) Known symptoms and triggers;
 - (ix) Emergency response plans and what procedures to perform; and
 - (x) Suggested special skills training, and education for early learning program staff, including specific pediatric first aid and CPR for special health care needs.

(b) An early learning provider must have supporting documentation of the child's special needs provided by the child's licensed or certified:

- (i) Physician or physician's assistant;
 - (ii) Mental health professional;
 - (iii) Education professional;
 - (iv) Social worker with a bachelor's degree or higher with a specialization in the individual child's needs; or
 - (v) Registered nurse or advanced registered nurse practitioner.
- (3) An early learning provider's written plan and documentation for accommodations must be informed by any existing:
- (a) Individual education plan (IEP);
 - (b) Individual health plan (IHP);
 - (c) 504 Plan; or
 - (d) Individualized family service plan (IFSP).

NEW SECTION

WAC 170-300-0305 Curriculum philosophy and planning. (1) An early learning provider must have a written curriculum philosophy that describes the program of planned daily activities related to early childhood or child development.

- (2) The curriculum philosophy must address all age groups being served, be informed by the Washington state early learning and development guidelines, and may include:
 - (a) How children develop emotionally, socially, cognitively, and physically;
 - (b) What early learning looks like or areas of focus for each age group being served;
 - (c) How the provider will meet cultural, dual language learner, and special needs of children in care;
 - (d) How to guide learning and social interactions;
 - (e) The importance of play to a child's learning process; and
 - (f) For infants and toddlers, the importance of developing consistent, nurturing relationships with caregivers as a component of learning.
- (3) Staff must be trained on the program's curriculum philosophy.
- (4) A lead teacher or family home early learning provider must be given regularly scheduled time to plan and develop curriculum and activities. Planning may be done during rest time but all supervision requirements pursuant to WAC 110-300-0345 must be met.

NEW SECTION

WAC 170-300-0310 Concept development and feedback quality. (1) An early learning provider must facilitate activities to support child learning and understanding.

- (2) An early learning provider may facilitate child learning and understanding through a variety of techniques such as:
 - (a) Using a variety of teaching strategies (different techniques, curricula, or styles) and materials to address different learning styles, abilities, developmental levels, and temperament;
 - (b) Helping children enter into and sustain play;

- (c) Encouraging children to participate by asking questions and providing guidance;
- (d) Providing opportunities for children's creativity;
- (e) Linking concepts and activities to one another and to the children's lives and interests;
- (f) Noticing and responding to teachable moments;
- (g) Clarifying and expanding children's understanding;
- (h) Describing and discussing children's learning processes;
- (i) Encouraging children's efforts and persistence;
- (j) Showing tolerance for mistakes;
- (k) Using diverse vocabulary;
- (l) Leading discussions and activities;
- (m) Providing materials during the day, including daily routines such as meals and transitions, to encourage communication in English and children's home languages when possible; and
- (n) Use scaffolding methods to gradually move children toward stronger understanding and greater independence in the learning process.

NEW SECTION

WAC 170-300-0315 Language modeling and reasoning. (1) An early learning provider must be aware of and responsive to children's developmental, linguistic, cultural, and academic needs.

(2) An early learning provider must be aware of and responsive to children's needs by engaging in activities such as:

- (a) Asking developmentally appropriate questions for the age group and allow children to answer without interruption from the provider;
- (b) Circulating among the children during free choice activities and talking with children about what they are doing;
- (c) Using teaching techniques such as:
 - (i) Self-talk: When the provider talks about what he or she is doing, seeing, eating, touching, or thinking as he or she is involved in that activity;
 - (ii) Parallel-talk: When the provider talks about what the child is doing, seeing, eating, or touching as the child is engaging in those activities; or
 - (iii) Language expansion: When the provider adds detail or new words to build on ideas that children are expressing.
- (d) An early learning provider working with preschool and school-age children must use language to develop and encourage reasoning skills by using techniques such as:
 - (i) Talking about logical relationships or concepts during the day including, but not limited to, the daily schedule, the differences and similarities between objects, or people in the classroom;
 - (ii) Introducing concepts using guiding questions that encourage children to figure out cause and effect relationships;
 - (iii) Providing opportunities for reading and writing activities; and
 - (iv) Asking open ended questions to help children improve skills and acquire knowledge.

(e) An early learning provider working with non-English speaking children must encourage language development and acquisition by using techniques such as:

- (i) Using words in various languages to talk about the routines;
- (ii) Reading books out loud or using audio books; and
- (iii) Playing games in different languages.

NEW SECTION

WAC 170-300-0320 Facilitating child interests, learning, perspective, and productivity. (1) An early learning provider must work to maximize children's interests, engagement with developmentally and culturally responsive activities, and ability to learn from play.

(2) An early learning provider must maximize children's interests, engagement, and abilities by using techniques such as:

- (a) Maximizing learning time with learning materials and products, limiting disruptions during activities, and offering additional choices when activities are completed;
- (b) Giving clear instructions and directions; and
- (c) Making opportunities for children to learn during transitions by clearly communicating expectations and keeping transitions to a duration that is developmentally appropriate.

(3) An early learning provider must offer developmentally and culturally responsive activities that offer a range of auditory, visual, and movement opportunities by using techniques such as:

- (a) Encourage child engagement;
- (b) Promote each child's self-help and social skills;
- (c) Organized around child interests and ideas;
- (d) Allow choice, exploration, and experimentation;
- (e) Promote active and play-based learning experiences;
- (f) Allow children freedom to move during activities;
- (g) Ensure child expression;
- (h) Utilize interesting and creative materials;
- (i) Offer hands-on opportunities for children;
- (j) Provide opportunity for children to direct their own learning and problem solving rather than teacher-directed activities; and
- (k) Orient and guide children toward learning objectives.

EMOTIONAL SUPPORT AND CLASSROOM ORGANIZATION

NEW SECTION

WAC 170-300-0325 Creating a climate for healthy child development. (1) When communicating or interacting with children, an early learning provider must maintain a climate for healthy, culturally responsive child development such as:

- (a) Using a calm and respectful tone of voice;
- (b) Using positive language to explain what children can do and give descriptive feedback;
- (c) Having relaxed conversations with children by listening and responding to what they say. Adult conversations must not dominate the overall sound of the group;

(d) Greeting children upon arrival and departure at the early learning program;

(e) Using facial expressions such as smiling, laughing, and enthusiasm to match a child's mood;

(f) Using physical proximity in a culturally responsive way to speak to children at their eye level and with warm physical contact including, but not limited to, gently touching a hand or shoulder, sitting next to a child, appropriately holding younger children close while communicating;

(g) Validating children's feelings and show tolerance for mistakes;

(h) Being responsive and listening to children's requests and questions, encouraging children to share experiences, ideas, and feelings;

(i) Observing children in order to learn about their families, cultures, individual interests, ideas, questions, and theories;

(j) Modeling and teaching emotional skills such as recognizing feelings, expressing them appropriately, accepting others' feelings, and controlling impulses to act out feelings;

(k) Representing the diversity found in the early learning program and society, including gender, age, language, and abilities, while being respectful of cultural traditions, values, religion and beliefs of enrolled families; and

(l) Interacting with staff and other adults in a positive, respectful manner.

(2) An early learning provider must encourage positive interactions between and among children with techniques such as:

(a) Giving children several chances a day to interact with each other while playing or completing routine tasks;

(b) Modeling social skills;

(c) Encouraging socially isolated children to find friends;

(d) Helping children understand feelings of others; and

(e) Including children with special needs to play with others.

NEW SECTION

WAC 170-300-0330 Positive relationships and child guidance. (1) An early learning provider must work to maintain positive relationships with children by using consistent guidance techniques to help children learn. Guidance techniques must adapt an early learning program's environment, routines, and activities to a child's strengths, developmental level, abilities, culture, community, and relate to the child's behavior.

(2) Guidance techniques may include:

(a) Coaching behavior;

(b) Modeling and teaching social skills such as taking turns, cooperation, waiting, self-control, respect for the rights of others, treating others kindly, and conflict resolution;

(c) Offering choices;

(d) Distracting;

(e) Redirecting or helping a child change their focus to something appropriate to achieve their goal;

(f) Planning ahead to prevent problems and letting children know what events will happen next;

(g) Explaining consistent, clear rules and involving children in defining simple, clear classroom limits;

(h) Involving children in solving problems; and

(i) Explaining to children the natural and logical consequence related to the child's behavior in a reasonable and developmentally appropriate manner.

NEW SECTION

WAC 170-300-0331 Prohibited behavior, discipline, and physical removal of children. (1) An early learning provider must take steps to prevent and, once aware of, must not tolerate:

(a) Profanity, obscene language, "put downs," or cultural or racial slurs;

(b) Angry or hostile interactions;

(c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;

(d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;

(e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;

(f) Prevent a child from or punish a child for exercising religious rights; or

(g) Anyone to:

(i) Restrict a child's breathing;

(ii) Bind or restrict a child's movement unless permitted under WAC 110-300-0335;

(iii) Tape a child's nose, mouth, or other body part;

(iv) Deprive a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;

(v) Force a child to ingest something as punishment such as hot sauce or soap;

(vi) Interfere with a child's ability to take care of his or her own hygiene and toileting needs;

(vii) Use toilet learning or training methods that punish, demean, or humiliate a child;

(viii) Withhold hygiene care, toileting care, or diaper changing from any child unable to provide such care for himself or herself;

(ix) Expose a child to extreme temperatures as punishment;

(x) Demand excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, having a child rest more than the child's development requires, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

(xi) Place the separated child in a closet, bathroom, locked room, outside, or in an unlicensed space; and

(xii) Use high chairs, car seats, or other confining space or equipment to punish a child or restrict movement.

(2) An early learning provider must supervise to protect children from the harmful acts of other children. A provider must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically aggressive.

(3) An early learning provider may separate a preschool age or school age child from other children when that child needs to regain control of him or herself.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, center director, assistant director, program supervisor, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, an early learning provider must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of his or her actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If an early learning provider follows all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, center director, assistant director, program supervisor, lead teacher, or an assistant teacher may physically remove the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child. Physical removal of a child is determined by that child's ability to walk:

(a) If the child is willing and able to walk, staff may hold the child's hand and walk him or her away from the situation.

(b) If the child is not willing or able to walk, staff may pick the child up and remove him or her to a quiet place where the child cannot hurt themselves or others.

NEW SECTION

WAC 170-300-0335 Physical restraint. (1) An early learning provider must have written physical restraint protocols pursuant to WAC 110-300-0490, and implement such protocols only when appropriate and after complying with all requirements of WAC 110-300-0330 and 110-300-0331.

(2) Physical restraint must only be used if a child's safety or the safety of others is threatened, and must be:

(a) Limited to holding a child as gently as possible to accomplish restraint;

(b) Limited to the minimum amount of time necessary to control the situation;

(c) Developmentally appropriate; and

(d) Only performed by early learning providers trained in a restraint technique pursuant to WAC 110-300-0106(9).

(3) No person may use bonds, ties, blankets, straps, car seats, high chairs, activity saucers, or heavy weights (including an adult sitting on a child) to physically restrain children.

(4) Licensees, center directors, assistant directors, program supervisors, lead teachers or trained staff must remove him or herself from a situation if they sense a loss of their own self-control and concern for the child when using a restraint technique if another early learning provider is pres-

ent. If an early learning provider observes another staff using inappropriate restraint techniques, the staff must intervene.

(5) If physical restraint is used, staff must:

(a) Report the use of physical restraint to the child's parent or guardian as soon as possible, but no later than the release of the child at the end of the day, and to the department within twenty-four hours, pursuant to WAC 110-300-0475;

(b) Assess any incident of physical restraint to determine if the decision to use physical restraint and its application were appropriate;

(c) Document the incident in the child's file, including the date, time, early learning program staff involved, duration and what happened before, during and after the child was restrained;

(d) Develop a written plan with input from the child's primary care or mental health provider, parents or guardians, to address underlying issues and reduce need for further physical restraint if:

(i) Physical restraint has been used more than once; and

(ii) A plan is not already a part of the child's individual care plan.

(e) Notify the department when a written plan has been developed.

NEW SECTION

WAC 170-300-0340 Expulsion. (1) To promote consistent care and maximize opportunities for child development and learning, an early learning provider must develop and follow expulsion policies and practices, pursuant to WAC 110-300-0486.

(2) An early learning provider may expel a child only if:

(a) The child exhibits behavior that presents a serious safety concern for that child or others; and

(b) The program is not able to reduce or eliminate the safety concern through reasonable modifications.

(3) If a child is expelled, an early learning provider must:

(a) Review the program's expulsion policy with the parent or guardian of the child;

(b) Provide a record to the parent or guardian about the expulsion and the steps that were taken to avoid expulsion. The record must include the date, time, early learning program staff involved, and details of each incident that led to expulsion; and

(c) Provide information to the parent or guardian of the child that includes, but is not limited to, community-based resources that may benefit the child.

(4) The early learning provider must report to the department when children are expelled. The information must include:

(a) Child demographic data including, but not limited to, the age, race, ethnicity, and gender of the child;

(b) The reason the child was expelled; and

(c) The resources that were provided to the parent or guardian of the child.

PROGRAM STRUCTURE AND ORGANIZATIONNEW SECTION

WAC 170-300-0345 Supervising children. (1) An early learning provider must only allow the following persons to have unsupervised access to a child in care:

- (a) That child's own parent or guardian;
- (b) Licensees or early learning program staff authorized by the department in chapter 110-06 WAC;
- (c) A government representative including an emergency responder who has specific and verifiable authority for access, supported by documentation; and
- (d) A person authorized in writing or over the phone by that child's parent such as a family member, family friend, or the child's therapist or health care provider.

(2) An early learning provider must meet capacity, group size, mixed age grouping, and staff-to-child ratios while children are in care. This includes, but is not limited to:

- (a) Indoor and outdoor play activities;
- (b) Off-site activities;
- (c) During transportation;
- (d) Meal times;
- (e) Rest periods;
- (f) Evening or overnight care; and
- (g) When children are on different floor levels of the early learning program.

(3) An early learning provider must supervise children in care by:

- (a) Scanning the environment looking and listening for both verbal and nonverbal cues to anticipate problems and plan accordingly;
- (b) Visibly checking children on many occasions with little time in between;
- (c) Positioning him or herself to supervise all areas accessible to children;
- (d) Attending to children and being aware of what children are doing at all times;
- (e) Being available and able to promptly assist or redirect a child as necessary; and
- (f) Considering the following when deciding whether increased supervision is needed:
 - (i) Ages of children;
 - (ii) Individual differences and abilities of children;
 - (iii) Layout of the indoor and outdoor licensed space and play area;
 - (iv) The risk associated with the activities children are engaged in; and
 - (v) Any nearby hazards including those in the licensed or unlicensed space.

(4) An early learning program staff member may undertake other activities for a temporary time period when not required to be providing active supervision required under subsection (5)(c) of this section. Such activities include, but are not limited to, cleaning up after an activity or preparing items for a new activity. This early learning staff member must remain in visual or auditory range, and be available and able to respond if needed.

(5) An early learning provider must:

- (a) Not use devices such as a baby monitors, video monitors, or mirrors in place of supervision, unless used pursuant to WAC 110-300-0270(5);
- (b) Be able to hear when doors in the immediate area are opened to prevent children from leaving unsupervised;
- (c) Actively supervise children when the children:
 - (i) Interact with pets or animals;
 - (ii) Engage in water or sand play;
 - (iii) Play in an area in close proximity to a body of water;
 - (iv) Use a safe route to access an outdoor play area not immediately adjacent to the early learning program;
 - (v) Engage in planned activities in the kitchen;
 - (vi) Ride on public transportation;
 - (vii) Engage in outdoor play; and
 - (viii) During field trips.
- (d) Ensure no infant or child is left unattended during:
 - (i) Diapering;
 - (ii) Bottle feeding; or
 - (iii) Tummy time.
- (e) Provide developmentally appropriate supervision to children while bathing.

NEW SECTION

WAC 170-300-0350 Supervising children during water activities. (1) During water activities, an early learning provider must meet all supervision requirements of this section and WAC 110-300-0345.

(2) During water activities, an early learning provider must:

- (a) Ensure a one-to-one (1:1) staff-to-child ratio for infants;
 - (b) Hold or have continuous touch of infants, nonambulatory toddlers, and children with special needs as required; and
 - (c) Keep toddlers within arm's length.
- (3) An early learning provider must have written permission for water activities from each child's parent or guardian.
- (4) For water activities on or off the early learning program premises, where the water is more than twenty-four inches deep, an early learning provider must ensure:
- (a) A certified lifeguard is present and on duty; and
 - (b) At least one additional staff member than would otherwise be required is present to help actively supervise if the children are preschool age or older.

(5) An early learning provider must have life-saving equipment readily accessible during water activities if a pool is six feet or more in any direction and two feet or more in depth. Life-saving equipment may include a ring buoy and rope, a rescue tube, or a throwing line and a shepherd's hook that will not conduct electricity.

(6) If an early learning provider takes children off-site to an area with an accessible body of water more than four inches deep (for example, a park with a lake or stream) but children are not engaging in a water activity, there must be:

- (a) At least one more staff person than required in the staff-to-child ratio; and
- (b) At least one attending staff person must be able to swim.

NEW SECTION

WAC 170-300-0354 Indoor early learning program space capacity. (1) To define capacity, licensed indoor early learning program space must have a minimum of thirty-five square feet per child in attendance and further comply with the requirements of this chapter.

(a) Center early learning program space must provide fifteen additional square feet for each infant or toddler using a crib or playpen if the crib or playpen is located or placed in the sleeping or play area.

(b) Floor space under tables, desks, chairs, and other equipment used as part of children's activities must be included in the overall capacity.

(c) Office or kitchen space that is inaccessible to children and not intended for their use must not be included in the overall capacity.

(d) Napping areas may be used as early learning program space if mats and cots are removed when not in use and children have free access to the area.

(2) The following indoor space must not be counted in the overall capacity:

(a) Unlicensed space;

(b) Hallway space that is used for emergency evacuation or is not approved to be used for program activities;

(c) Bathrooms and diaper changing areas (including twenty-four inches surrounding diaper changing areas and handwashing sink, unless the diaper changing area has a two foot high barrier);

(d) Laundry areas;

(e) Closets;

(f) Stairways; and

(g) Floor space occupied by shelves, built-in cabinets, file cabinets, desks, or other office equipment not intended to be accessible to children.

(3) A large, licensed indoor gross motor activity space may be used to supplement the requirements of outdoor program space, pursuant to WAC 110-300-0145, but must not be counted in the overall capacity if:

(a) The space provides seventy-five square feet per child for the maximum number of children listed on the license or the provider rotates groups of children; and

(b) The space is safe and appropriate for activities otherwise performed in an outdoor play space.

NEW SECTION

WAC 170-300-0355 Family home capacity, ratio, and group size. (1) The department issues initial or nonexpiring family home licenses for up to twelve children. The department will not issue a family license to care for more children than permitted by the rules in this chapter but may issue a license to care for fewer than the maximum allowable enrolled children. Family home licenses state:

(a) The maximum number of children that may be in care at any one time (total capacity); and

(b) The age range of children allowed in care.

(2) The department determines capacity for a family home early learning program after considering:

(a) Square footage of the early learning program;

(b) An early learning provider's years of experience in licensed child care (experience must be from working as a center director, program supervisor, lead teacher, family home licensee, or another similar role in a child care setting);

(c) A provider's education and ongoing training;

(d) The age range requested or approved by the department;

(e) The amount of developmentally appropriate equipment, materials, and toys an early learning program can provide children to use;

(f) A provider's licensing history with the department; and

(g) The number of qualified staff available to meet staff-to-child ratios.

(3) A family home licensee must not exceed the total capacity or age range stated on the child care license at any time except as provided in this section. All children on the premises, signed in to child care, on an off-site trip from the early learning program, or being transported by the early learning program staff are counted in capacity including the children of staff.

(a) A family home licensee must receive department approval to care for a child with special needs, pursuant to WAC 110-300-0300, if the child is older than the maximum age identified on the license. A child with documented special needs may be in care up to age nineteen and must be counted in both capacity and staff-to-child ratio.

(b) A child with special needs who requires individualized supervision pursuant to WAC 110-300-0300 counts towards capacity but does not count in the staff-to-child ratio.

(c) A child who turns thirteen years old permitted by chapter 110-15 WAC and who must be counted in both capacity and staff-to-child ratio.

(4) Any child birth through twelve years old on the premises, signed in to the child care, on an off-site trip from the early learning program, or being transported counts in capacity. This includes a family home licensee's own children, children of staff, or visiting children not accompanied or supervised by an adult.

(5) A family home licensee must provide qualified staff to fulfill the staffing requirements and staff-to-child ratios during operating hours, including off-site activities and when transporting children in care.

(6) A family home licensee must provide additional staff, pursuant to WAC 110-300-0350, when children are participating in water activities or activities near water.

(7) When applying for an initial or nonexpiring family home license, a family home licensee with less than one year of experience may request from the department a capacity of up to six children, birth through twelve years of age.

(a) A maximum of three children may be under two years of age.

(b) If there are three children under two years of age, one of these children must be able to walk independently.

(8) When applying for an initial or nonexpiring family home license, a family home licensee with at least one year but less than two years of experience and:

(a) Working alone may request a capacity of up to eight children ages two through twelve years of age, with a maximum of four children under three years of age.

(b) Working with a qualified assistant may request a capacity of up to nine children birth through twelve years of age with a maximum of four children under two years of age.

(9) When applying for an initial or nonexpiring family home license, a family home licensee with at least two years' experience and:

(a) Working alone may request a capacity of up to ten children ages three years through twelve years of age;

(b) Working alone may request a capacity of up to twelve children for school age children only; and

(c) Working with a qualified assistant, may request a capacity of up to twelve children birth through twelve years of age with a maximum of six children under two years of age with two children being able to walk independently.

(10) A family home licensee, with two years of experience, may request a license for birth to twenty-four months of age with a maximum group size of eight when:

(a) There are two staff present with the group consisting of one staff who meets the qualification of the licensee and another who meets the qualifications to be counted in ratio;

(b) The staff-to-child ratio is 1:4;

(c) Fifteen additional square feet are provided for each infant or toddler; and

(d) A second staff member is present whenever:

(i) More than two children in care do not walk independently; or

(ii) When there are more than four children in care.

(11) The staff-to-child ratio is determined by the ages and number of children in care. Two early learning program staff are required anytime:

(a) More than six children are in care and any child in care is under two years of age;

(b) More than eight children are in care and any child in care is under three years of age; or

(c) More than ten children are in care and any child is under school age.

NEW SECTION

WAC 170-300-0356 Center capacity, ratio, and group size. (1) The department issues initial or nonexpiring center early learning provider licenses. The department will not issue a center license to care for more children than permitted by the rules in this chapter. The department may issue a license to care for fewer than the maximum allowable enrolled children. For each center, licenses state:

(a) The maximum number of children that may be in care at any one time (total capacity);

(b) The licensed capacity for each space within the center licensed for use by children; and

(c) The age range of children allowed in care.

(2) The department determines capacity for a center early learning program after considering:

(a) Square footage of the early learning program;

(b) A provider's education and ongoing training;

(c) The age range of children requested or approved by the department;

(d) The amount of developmentally appropriate equipment, materials, and toys an early learning program can provide children to use;

(e) A provider's licensing history with the department; and

(f) The number of qualified staff available to meet staff-to-child ratios.

(3) A center licensee must not exceed the total capacity or age range stated on the child care license at any time except as provided in this section. All children on the premises, signed in to child care, on an off-site trip from the early learning program, or being transported by the early learning program staff are counted in capacity including the children of staff.

(a) A center licensee must receive department approval to care for a child with special needs, pursuant to WAC 110-300-0300, if the child is older than the maximum age identified on the license. A child with documented special needs may be in care up to age nineteen and must be counted in capacity and staff-to-child ratio.

(b) A child with special needs who requires individualized supervision pursuant to WAC 110-300-0300 does not count in the staff-to-child ratio.

(c) A child who turns thirteen years old permitted by chapter 110-15 WAC must be counted in both capacity and staff-to-child ratio.

(4) A center licensee must provide qualified staff to fulfill staffing requirements, staff-to-child ratios, group size, and mixed age grouping during operating hours, including off-site activities or when transporting children in care.

(5) In each classroom or well-defined space, the maximum group size and ratio of center staff members to children, including children related to staff or the licensee, must be:

(a) Infants (birth through eleven months of age) with a:

(i) Maximum group size of eight with a ratio of one staff to four children (1:4);

(ii) Maximum group size of nine with a ratio of 1:3.

(b) Toddlers (twelve through twenty-nine months of age) with a:

(i) Maximum group size of fourteen with a ratio of 1:7;

(ii) Maximum group size of fifteen with a ratio of 1:5.

(c) Preschoolers (thirty months through six years of age who are not attending kindergarten or elementary school) with a maximum group size of twenty with a ratio of 1:10; and

(d) School-age children (five years through twelve years of age who are enrolled in or attending kindergarten or elementary school) with a maximum group size of thirty with a ratio of 1:15.

(6) A center licensee may combine children of different age groups for periods of no more than the first two hours of the day or the last two hours of the day, not to exceed two hours in any given day, provided the staff-to-child ratio and group size designated for the youngest child in the mixed group are maintained.

(7) Children at least five years old and enrolled in or attending kindergarten may be a part of the preschool or school-age group if developmentally appropriate and the child's parent or guardian agrees to this placement.

(8) A center licensee must conduct activities for each group of children in a specific room or other defined space within a larger area.

(9) A center licensee must provide additional staff as described in WAC 110-300-0350 when children are participating in water activities or activities near water.

(10) When only one center staff is required to care for the only group of children on-site for up to an hour at the beginning or end of the day, the center licensee must ensure:

(a) That staff member provides an appropriate level of supervision at all times to the children in care;

(b) That staff member is free of all other duties while providing care to children; and

(c) A second individual with a cleared background check is on-site and readily available to respond if needed, or the department approves an alternate plan.

NEW SECTION

WAC 170-300-0357 Center mixed age group capacity, ratio, and group size. (1) A center early learning program must do the following to mix age groups of children in care (in addition to any specific requirements of this section):

(a) Meet the square footage and staff-to-child ratio requirements for the youngest child present in the group;

(b) Meet the health, safety, and developmental needs for all ages of children in the mixed group; and

(c) Inform the department of the center's mixed age group policy.

(2) A center early learning program must do the following to mix groups of children birth to thirty-six months old with a maximum group size of eight children:

(a) Have at least two staff present with the group, consisting of one lead teacher and one other staff member qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:4.

(3) A center early learning program must do the following to mix groups of children birth to thirty-six months old with a maximum group size of nine children:

(a) Have at least three staff present with the group, consisting of one lead teacher and two other staff members qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:3.

(4) A center early learning program must do the following to mix groups of children twelve to thirty-six months old:

(a) Have at least two staff present with the group, consisting of one lead teacher and one other staff member qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:7 with a maximum group size of fourteen children.

(5) A center early learning program must do the following to mix groups of children twelve to thirty-six months old:

(a) Have at least three staff present with the group, consisting of one lead teacher and two other staff members qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:5 with a maximum group size of fifteen children.

(6) A center early learning program must do the following to mix groups of children between thirty-six months old through kindergarten with a maximum group size of twenty children:

(a) Have at least two staff present with the group, consisting of one lead teacher and one other staff member qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:10.

(7) A center early learning program must do the following to mix groups of children between thirty-six months old through kindergarten with a maximum group size of twenty-six children:

(a) Have at least three staff present with the group, consisting of one lead teacher and two other staff members qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:10.

(8) A center early learning program must do the following to mix groups of children four and one-half to nine years old with a maximum group size of twenty children:

(a) Have at least two staff present with the group, consisting of one lead teacher and one other staff member qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:10.

(9) A center early learning program must do the following to mix groups of children four and one-half to nine years old with a maximum group size of twenty-six children:

(a) Have at least three staff present with the group, consisting of one lead teacher and two other staff members qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:10.

NEW SECTION

WAC 170-300-0360 Program and daily schedule. (1) An early learning provider must have an established program and daily schedule that is familiar to children.

(2) A schedule must be designed to meet enrolled children's developmental, cultural, and special needs. The daily schedule must:

(a) Be specific for each age group of children, when applicable;

(b) Offer a variety of activities to meet children's needs, pursuant to WAC 110-300-0150;

(c) Meet the following daily morning or afternoon active outdoor play time requirements:

(i) Twenty minutes for each three hours of programming for infants (as tolerated) and toddlers;

(ii) Thirty minutes for each three hours of programming for children preschool age and older; and

(iii) Programs that operate more than six hours a day must provide ninety minutes of active play for preschool age and up or sixty minutes of active play for infants and toddlers (thirty minutes of which may be moderate to vigorous indoor activities).

(d) Include scheduled and consistent times for meal service;

(e) Include routine transportation times, if applicable;

(f) Include rest periods, if applicable; and

(g) Include overnight care, if applicable.

**PROGRAM ADMINISTRATION AND OVERSIGHT
LICENSING PROCESS**

NEW SECTION

WAC 170-300-0401 License fees. (1) The rules establishing licensing fees within this chapter are adopted pursuant to RCW 43.216.300.

(2) The license fee is nonrefundable and is due:

(a) With the early learning applicant's initial license application packet; and

(b) Annually thereafter, thirty calendar days prior to the anniversary date of the license.

(3) Payment must be in the form of a check, credit or debit card, or money order.

(4) The annual fee for family home early learning programs is thirty dollars, or as otherwise set by the legislature.

(5) The annual fee for center early learning programs is one hundred twenty-five dollars for the first twelve children plus twelve dollars for each additional child, or as otherwise set by the legislature.

NEW SECTION

WAC 170-300-0402 Changing early learning program space or location. (1) An early learning provider must notify the department prior to making a change to early learning program space that may impact the health, safety, or welfare of enrolled children. Such changes include, but are not limited to:

(a) Moving early learning programs to a different residence, building, or facility (even if the new location is on the same premises);

(b) An early learning program altering a planned use of space including, but not limited to, the ages of children served in a room or previously unlicensed areas;

(c) Modifying facilities in a way that requires a permit under the Washington state building code or by a local jurisdiction, such as remodeling or renovating early learning program space; and

(d) Changing outdoor play areas, such as adding or altering the type of surface or altering stationary climbing or play equipment.

(2) An early learning provider must submit to the department the new proposed floor plan prior to making changes under subsection (1)(a) through (c) of this section.

(3) An early learning provider planning a change under subsection (1)(a) of this section must also:

(a) Submit a complete application, pursuant to WAC 110-300-0400, as soon as the provider plans to move and has an identified address, but not more than ninety calendar days before moving;

(b) Not significantly change or move a center early learning program until the department has first inspected the new location and determines it meets the requirements in this chapter and RCW 43.216.305; and

(c) Not operate a family home early learning program for more than two weeks following the move before having the department inspect the new location, pursuant to RCW 43.216.305.

NEW SECTION

WAC 170-300-0415 Zoning, codes, and ordinances.

(1) The department adopts and incorporates by reference the Washington state building code (chapter 19.27 RCW), as now and hereafter amended.

(2) Early learning program space must comply with the Washington state building code or local building code as enacted at the time of licensure. Facility modifications must comply with WAC 110-300-0402.

(3) Prior to licensing, an applicant must contact state, city, and local agencies that regulate the early learning program. An early learning provider must obtain regulations and comply with the direction given by such agencies. These agencies may include, but are not limited to, the Washington state department of labor and industries, the Washington state fire marshal, the Washington state department of health, and local health jurisdictions.

(4) Prior to licensing, a center early learning applicant must:

(a) Have a certificate of occupancy issued by the local building, planning, or zoning department, or a local equivalent if locality does not have the certificate of occupancy; and

(b) Be inspected and approved by the state fire marshal.

NEW SECTION

WAC 170-300-0420 Prohibited substances. (1) Chapter 70.160 RCW prohibits smoking in public places and places of employment.

(2) Pursuant to RCW 70.160.050, an early learning provider must:

(a) Prohibit smoking, vaping, or similar activities in licensed indoor space, even during nonbusiness hours;

(b) Prohibit smoking, vaping, or similar activities in licensed outdoor space unless:

(i) Smoking, vaping or similar activities occurs during nonbusiness hours; or

(ii) In an area for smoking or vaping tobacco products that is not a "public place" or "place of employment," as defined in RCW 70.160.020.

(c) Prohibit smoking, vaping, or similar activities in motor vehicles used to transport enrolled children;

(d) Prohibit smoking, vaping, or similar activities by any provider who is supervising children, including during field trips;

(e) Prohibit smoking, vaping, or similar activities within twenty-five feet from entrances, exits, operable windows, and vents, pursuant to RCW 70.160.075; and

(f) Post "no smoking or vaping" signs. Signs must be clearly visible and located at each building entrance used as part of the early learning program.

(3) An early learning provider must:

(a) Prohibit any person from consuming or being under the influence of alcohol on licensed space during business hours;

(b) Prohibit any person within licensed space from consuming or being under the influence of illegal drugs or misused prescription drugs;

(c) Store any tobacco or vapor products, or the packaging of tobacco or vapor products in a space that is inaccessible to children;

(d) Prohibit children from accessing cigarette or cigar butts or ashes;

(e) Store any cannabis or associated paraphernalia out of the licensed space and in a space that is inaccessible to children; and

(f) Store alcohol in a space that is inaccessible to children (both opened and closed containers).

(4) A center early learning provider must prohibit any person from using, consuming, or being under the influence of cannabis in any form on licensed space.

(5) A family home early learning provider must prohibit any person from using, consuming, or being under the influence of cannabis products in any form on licensed space during business hours.

NEW SECTION

WAC 170-300-0425 Initial, nonexpiring, dual licenses, and license modification. (1) The department may issue an initial license when an early learning program applicant demonstrates compliance with health and safety requirements of this chapter but may not be in full compliance with all requirements, pursuant to RCW 43.216.315.

(a) An initial license is valid for six months from the date issued.

(b) At the department's discretion, an initial license may be extended for up to three additional six-month periods, not to exceed a total of two years.

(c) The department must evaluate the early learning provider's ability to follow requirements contained in this chapter during the initial license period.

(2) The department may issue a nonexpiring license to a licensee operating under an initial license who demonstrates compliance with the requirements of this chapter during the period of initial licensure, pursuant to RCW 43.216.305.

(3) A licensee must submit annual compliance documents at least thirty calendar days prior to that provider's anniversary date. A provider's anniversary date is the date the first initial license was issued. Pursuant to RCW 43.216.305, the required annual compliance documents are:

(a) The annual nonrefundable license fee;

(b) A declaration on the department's form indicating:

(i) The intent to continue operating a licensed early learning program;

(ii) The intent to cease operation as a licensed early learning program;

(iii) A change in the early learning program's operational hours or dates; and

(iv) The intent to comply with all licensing rules.

(c) Documentation of completed background check applications as determined by the department's established schedule, pursuant to RCW 43.216.270(2); and

(d) For each individual required to have a background check clearance, the early learning provider must verify current background checks or require the individual to submit a background check application at least thirty calendar days prior to the anniversary date.

(4) If a licensee fails to meet the requirements for continuing a nonexpiring license by their anniversary date, the licensee's current license expires. The early learning provider must submit a new application for licensure, pursuant to RCW 43.216.305(3).

(5) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practices, pursuant to RCW 43.216.305 (4)(a).

(6) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a nonexpiring license resulting from a failure to comply with the requirements of this section.

(7) A licensee must have department approval to hold dual licenses (for example: An early learning program license and another care giving license, certification, or similar authorization).

(8) If the department determines that a licensee is not meeting all applicable requirements and regulations:

(a) The department and licensee may agree to modify the child care license;

(b) The licensee may give up one of the licenses, certifications, or authorizations; or

(c) The department may suspend, deny, or revoke the early learning license, pursuant to RCW 43.216.325.

(9) An early learning provider must report within twenty-four hours:

(a) To the department and local authorities: A fire or other structural damage to the early learning program space or other parts of the premises;

(b) To the department:

(i) A retirement, termination, death, incapacity, or change of the program director, or program supervisor, or change of ownership or incorporation of a provider;

(ii) When a provider becomes aware of a charge or conviction against themselves, a staff person or, applicable household member, pursuant to WAC 110-06-0043;

(iii) When a provider becomes aware of an allegation or finding of abuse, neglect, maltreatment, or exploitation of a child or vulnerable adult made against themselves, a staff person, or a household member, if applicable;

(iv) A change in the number of household members living within a family home early learning program space. This includes individuals fourteen years old or older that move in or out of the home, or a resignation or termination, pursuant to RCW 43.216.390. A birth or death affecting the number of household members must be reported within twenty-four hours or at first opportunity; and

(v) Any changes in the early learning program hours of operation to include closure dates.

(10) Prior to increasing capacity of an early learning program, the licensee, center director, assistant director, or program supervisor must request and be approved to increase capacity by the department.

(11) Licensee, center director, assistant director, or program supervisor must have state fire marshal or department approval and comply with local building ordinances following a significant change under WAC 110-300-0402 (1)(a) through (c), if applicable.

(12) Licensee, center director, assistant director, or program supervisor must notify the department within thirty cal-

endar days when liability insurance coverage under RCW 43.216.700 has lapsed or been terminated.

NEW SECTION

WAC 170-300-0435 Waiver from department rules

—**WAC.** (1) The department cannot waive a requirement of state law (RCW) or federal law.

(2) Pursuant to RCW 43.216.065, the department may approve a waiver from a rule in this chapter if it does not jeopardize the health, safety, or welfare of the children in care.

(3) An early learning provider's request for a waiver from a rule in this chapter must be:

(a) Submitted in writing on the department's form to the local licensing office;

(b) Approved in writing by the department director or the director's designee prior to the early learning provider implementing the waiver from the rule; and

(c) For a specific program need or child.

(4) A granted waiver may be time specific or may remain in effect for as long as the early learning provider continues to comply with the conditions of the waiver. If the waiver from the rule is time limited, the provider must not exceed the time frame established by the department.

(5) The department may revoke a granted waiver if a licensing rule which was considered in granting the waiver is materially altered or amended.

NEW SECTION

WAC 170-300-0436 Variance from department rules

—**WAC.** (1) The department cannot provide variance from a requirement in state (RCW) or federal law.

(2) Upon written request of an applicant, licensee, center director, assistant director, or program supervisor, the department may grant a variance from a rule in this chapter if the proposed program alternative does not jeopardize the health, safety, or welfare of the children in care.

(3) A request for variance from a rule in this chapter must be:

(a) Submitted in writing on the department's form to the local licensing office;

(b) Approved in writing by the department director or the director's designee prior to the early learning provider implementing the variance from the rule; and

(c) For a specific program approach or methodology.

(4) A granted variance may be time specific or may remain in effect for as long as the early learning provider continues to comply with the conditions of the variance. If the variance from the rule is time limited, the provider must not exceed the time frame established by the department.

(5) The department may revoke a granted variance if a licensing rule which was considered in granting the variance is materially altered or amended.

NEW SECTION

WAC 170-300-0440 Facility licensing compliance agreements, nonreferral status, probationary license, and provider rights. (1) At the department's discretion, when an

early learning provider is in violation of this chapter or chapter 43.216 RCW, a facility licensing compliance agreement (FLCA) may be issued in lieu of the department taking enforcement action. The FLCA must contain:

(a) A description of the violation and the law or rule that was violated;

(b) A proposed plan from the provider or a designee to comply with the law or rule;

(c) The date the violation must be corrected, determined by:

(i) The seriousness of the violation;

(ii) The potential threat to the health, safety, and well-being of the children in care; and

(iii) The number of times the early learning program has violated rules in this chapter or under chapter 43.216 RCW.

(d) Information regarding other licensing action that may be imposed if compliance does not occur by the required date;

(e) The signature of the department licensor and the licensee.

(2) An early learning provider must return a copy of the completed FLCA to the department after corrective action has been completed and by the date indicated.

(3) An early learning provider may request an internal review process regarding the violation of department rules pursuant to RCW 43.216.395.

(4) In an enforcement action against an early learning program or provider, the provider has the right to:

(a) Refuse to accept or sign a FLCA.

(b) Refuse to agree to a probationary license.

(5) If an early learning provider refuses a FLCA or probationary license, this may result in any of the following enforcement actions:

(a) Modification of the license;

(b) Noncontinuation of a nonexpiring license;

(c) Suspension of the license;

(d) Revocation of the license; or

(e) Civil penalties.

(6) The department may place an early learning provider on nonreferral status, pursuant to RCW 43.216.325(4), in addition to or in lieu of an enforcement action under this chapter.

(7) A probationary license may be issued to an early learning provider or program operating under a nonexpiring license as part of a corrective action plan. Prior to issuing a probationary license, the department must refer the program or provider for technical assistance, pursuant to RCW 43.216.320(2).

(8) A department decision to issue a probationary license is based on an early learning program or provider's:

(a) Negligent or intentional noncompliance with the licensing rules;

(b) History of noncompliance with licensing rules;

(c) Current noncompliance with licensing rules;

(d) Fire safety inspection or health and sanitation inspection report that failed to gain approval;

(e) Use of unauthorized space for child care;

(f) Inadequate supervision of children;

(g) Understaffing for the number of children in care;

(h) Noncompliance with requirements addressing children's health, proper nutrition, discipline, emergency medical plan, sanitation or personal hygiene practices; and

(i) Any other factors relevant to the specific situation and consistent with the intent or purpose of chapter 43.216 RCW.

(9) When the department issues a probationary license, the early learning provider must:

(a) Provide notice of the probationary license and a copy of the department's probationary licensing agreement to the parents or guardians of enrolled children within five business days of receiving the probationary license;

(b) Provide documentation to the department that parents or guardians of enrolled children have been notified within ten business days of receiving the probationary license;

(c) Inform new parents or guardians of the probationary status before enrolling new children into care;

(d) Return the early learning program's nonexpiring license to the department; and

(e) Post documentation of the approved written probationary license as required by RCW 43.216.687.

(10) Pursuant to RCW 43.216.689, an early learning provider must have inspection reports and notices of enforcement actions for the past three years readily available for review by the department, parents, and the public.

NEW SECTION

WAC 170-300-0443 Enforcement actions, notice, and appeal. (1) Pursuant to RCW 43.216.325, the department is authorized to take enforcement actions when an early learning provider fails to comply with this chapter or chapter 43.216 RCW. Enforcement actions are taken pursuant to RCW 43.216.020, 43.216.065, and 43.216.250. Enforcement actions include civil monetary penalties (fines) and the denial, suspension, revocation, modification, or nonrenewal of a license.

(2) An early learning provider subject to an enforcement action has the right to appeal by requesting an adjudicative proceeding (or "hearing") pursuant to chapter 110-03 WAC, DCYF hearing rules.

(3) The department must issue a notice of violation to an early learning provider when taking enforcement actions. A notice of violation must be sent by certified mail or personal service and must include:

(a) The reason why the department is taking the action;

(b) The rules the provider failed to comply with;

(c) The provider's right to appeal enforcement actions;

and

(d) How the provider may appeal and request a hearing.

(4) Fines shall not exceed two hundred fifty dollars per day per violation for center early learning programs or one hundred fifty dollars per day per violation for family home early learning programs, or as otherwise set by the legislature. Fines may be:

(a) Assessed and collected with interest for each day a violation occurs;

(b) Imposed in addition to other enforcement actions; and

(c) Withdrawn or reduced if an early learning provider comes into compliance during the notification period.

(5) An early learning provider must pay fines within twenty-eight calendar days after receiving a notice of violation unless:

(a) The office of financial recovery establishes a payment plan for the provider; or

(b) The provider requests a hearing, pursuant to chapter 110-03 WAC, DCYF hearing rules and RCW 43.216.335(3).

(6) The department may suspend or revoke a license if an early learning provider fails to pay a fine within twenty-eight calendar days or becomes delinquent in making payments, pursuant to RCW 43.216.327 and 43.216.335. If a provider's license is due for annual compliance, the department may elect not to continue the license for failure to pay a fine.

RECORDS, POLICIES, REPORTING AND POSTING

NEW SECTION

WAC 170-300-0450 Parent or guardian handbook and related policies. (1) An early learning provider must supply to each parent or guardian written policies regarding the early learning program. Each enrolled child's record must have signed documentation stating the parent or guardian reviewed the handbook and early learning program policies.

(2) An early learning provider must have and follow formal written policies in either paper or electronic format, including:

(a) A nondiscrimination statement;

(b) A family engagement and partnership communication plan;

(c) A parent or guardian's permission for photography, videotaping, or surveillance of his or her child;

(d) Alcohol, tobacco, cannabis use and prohibition of illegal drugs;

(e) Curriculum philosophy on how children learn and develop, and how this philosophy is implemented;

(f) Child guidance plan, which includes restraint policies and forbidding corporal punishment;

(g) Expulsion policy;

(h) Early learning program staff-to-child ratios and classroom types offered, if applicable;

(i) If the early learning program offers any of the following, they must include a policy for each that applies to their program:

(i) Care for children with specific or special needs;

(ii) Infant and toddler care, covering:

(A) Diapering;

(B) Feeding;

(C) Toilet training;

(D) Child sleep pattern; and

(E) Safe sleep requirements.

(iii) Dual language learning;

(iv) Religious and cultural activities, including how holidays will be celebrated;

(v) Transportation and off-site field trips;

(vi) Water activities;

(vii) Overnight care; and

(viii) How weapons on the premises are secured.

(j) Program days and hours of operation, including closure dates and observed holidays;

- (k) Enrollment and disenrollment requirements;
- (l) Fees and payment plans;
- (m) Sign-in and sign-out requirements;
- (n) Information required for the child's record, including:
 - (i) The importance and plan for keeping the information current;
 - (ii) A plan to keep the child's information confidential; and
 - (iii) Who may legally access the child's information.
- (o) A kindergarten transition plan, if applicable;
- (p) What parents or guardians must supply for their child (for example: Extra clothing or diapers);
- (q) Permission for a parent or guardian's access to areas of the early learning program during business hours;
- (r) Termination of services policy;
- (s) Emergency preparedness plan;
- (t) The early learning provider and program staff's duty to report incidents including reporting suspected child abuse, neglect, sexual abuse, or maltreatment;
- (u) Policies regarding mixed age groups, if applicable (including when children may be in a mixed age group);
- (v) Description of where the parent or guardian may find and review the early learning program's:
 - (i) Health policy;
 - (ii) Staff policies, if applicable;
 - (iii) Consistent care policy;
 - (iv) Menus;
 - (v) Liability insurance;
 - (vi) Inspection reports and notices of enforcement actions, if applicable; and
 - (vii) Other relevant program policies.

NEW SECTION

WAC 170-300-0455 Attendance records. (1) An early learning provider may keep a child in care up to a maximum of ten hours each day. If needed, the maximum time may be extended based upon the parent or guardian's work, an agreed upon alternate schedule, or travel to and from the early learning program.

(2) An early learning provider must keep daily child attendance records, either in paper or electronic format, for each child (including the children of staff in the program). These records must be easily accessible and kept on-site or in the program's administrative office for department review. These records must clearly document:

- (a) The name of the child;
- (b) The date of care;
- (c) Child arrival and departure times from the early learning program;
- (d) Signature or electronic signature of parent, guardian or other authorized person at the time of arrival and departure; and
- (e) A staff signature when a child leaves the early learning program to attend school or participate in off-site activities not offered by the early learning program.

(3) An early learning provider must keep daily staff attendance records for each center classroom or family home program. These attendance records must be on paper or in an electronic format and clearly document:

- (a) The name of each staff member (including staff assigned to care for children with special needs and one-on-one care) and volunteers;
 - (b) The number of children in each classroom or family home program;
 - (c) The staff-to-child ratio;
 - (d) The date; and
 - (e) Start and end times of the assigned staff or volunteers.
- (4) If the attendance records are kept electronically, the electronic system must:
- (a) Record either an electronic signature, swipecard, personal identification number (PIN), biometric reader, or similar action by the parent or authorized person when signing the child in or out of care (or staff notation of who picked up or dropped off along with time in and out if authorized person does not have electronic signature, swipe card, PIN, biometric reader or similar action);
 - (b) Ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against disproof of the electronic records;
 - (c) Be able to produce an authentic, verifiable and uniquely identified written record for each transaction;
 - (d) Be able to authenticate (prove the identity of) the sender of the record and ensure that the electronic record has not been altered;
 - (e) Be able to capture an electronic record for each transaction conducted;
 - (f) Be able to retain the electronic record in an accessible form for their legal minimum retention period;
 - (g) Be able to search and retrieve electronic records in the normal course of business; and
 - (h) Be able to perform in an accurate, reliable, and consistent manner in the normal course of business.
- (5) Electronic attendance records must contain information necessary to reproduce the entire electronic record and associated signatures in a form that permits a person viewing or printing the entire electronic record to verify:
- (a) The contents of the electronic record;
 - (b) The person signing the electronic record; and
 - (c) The date signatures were executed.

NEW SECTION

WAC 170-300-0460 Child records. (1) An early learning provider must keep current individualized enrollment and health records for all enrolled children, including children of staff, updated annually or more often as health records are updated.

- (a) A child's record must be kept in a confidential manner but in an area easily accessible to staff.
 - (b) A child's parent or guardian must be allowed access to all of his or her own child's records.
- (2) Each child's enrollment record must include the following:
- (a) The child's birth date;
 - (b) An enrolled child's parent or phone numbers, address, and contact information for reaching the family while the child is in care;

(c) Emergency contact information. If no emergency contact is available, a written and signed emergency contact plan may be accepted;

(d) Names and phone numbers of persons authorized to pickup enrolled children;

(e) A plan for special or individual needs of the child, if applicable, including parent or guardian signature, pursuant to WAC 110-300-0300;

(f) Signed parent or guardian permissions, pursuant to WAC 110-300-0450 as applicable for:

(i) Field trips;

(ii) Transportation;

(iii) Bathing;

(iv) Water activities including swimming pools or other bodies of water; and

(v) Photo, video, or surveillance activity.

(g) The beginning and end enrollment date for children no longer in the early learning program's care;

(h) A parent or guardian approved plan for use of physical restraint and documentation of parental or guardian notification;

(i) Expulsion information, documentation, and steps taken to avoid expulsion;

(j) Termination of services documentation and communication; and

(k) Notification of child developmental screening information given to the child's parent or guardian, if applicable.

(3) Each child's health record and the information described in subsection (2)(a) through (e) of this section must be available to staff for medical administration or emergencies.

(4) A health record is required for every child who is enrolled and counted in an early learning program's capacity. A health record must include:

(a) An immunization record, pursuant to WAC 110-300-0210(1);

(b) The child's health history including any known health conditions and the child's individual care plan, if applicable;

(c) A medication authorization and administration log, pursuant to WAC 110-300-0215, if applicable;

(d) Documentation of special medical procedure training by parent or guardian, if applicable;

(e) Medical and dental care provider names and contact information or what facility the parent or guardian would prefer for treatment;

(f) Dates of the child's last physical exam and dental exam, if available;

(g) Consent to seek medical care and treatment of the child in the event of injury or illness, signed by the child's parent or guardian;

(h) Signed parent or guardian permission for visiting health professionals who provide direct services to children at the early learning program;

(i) An incident or injury report that includes:

(i) The date and description of the child's incident or injury;

(ii) Treatment provided to the child while in care;

(iii) The names of the early learning program staff providing the treatment; and

(iv) Evidence that a copy of the incident or injury report was given to the child's parent or guardian.

(j) Documentation that a provider reported food poisoning or contagious diseases to the local health jurisdiction or the department of health, if applicable.

NEW SECTION

WAC 170-300-0470 Emergency preparedness plan.

(1) An early learning provider must have and follow a written emergency preparedness plan. The plan must be reviewed and approved by the department prior to when changes are made. Emergency preparedness plans must:

(a) Be designed to respond to fire, natural disasters, and other emergencies that might affect the early learning program;

(b) Be specific to the early learning program and able to be implemented during hours of operation;

(c) Address what the provider would do if he or she has an emergency and children may be left unsupervised;

(d) Address what the early learning program must do if parents are not able to get to their children for up to three days;

(e) Must follow requirements in chapter 212-12 WAC, Fire marshal standards, as now or hereafter amended and the state fire marshal's office requirements if a center early learning program;

(f) Be reviewed at program orientation, annually with all early learning program staff with documented signatures, and when the plan is updated; and

(g) Be reviewed with parents or guardians when a child is enrolled and when the plan is updated.

(2) The written emergency preparedness plan must cover at a minimum:

(a) Disaster plans, including fires that may require evacuation:

(i) An evacuation floor plan that identifies room numbers or names of rooms, emergency exit pathways, emergency exit doors, and for family home based programs, emergency exit windows if applicable;

(ii) Methods to be used for sounding an alarm and calling 911;

(iii) Actions to be taken by a person discovering an emergency;

(iv) How the early learning provider will evacuate children, especially those who cannot walk independently. This may include infant evacuation cribs (for center early learning programs), children with disabilities, functional needs requirements, or other special needs;

(v) Where the alternate evacuation location is;

(vi) What to take when evacuating children, including:

(A) First-aid kit(s);

(B) Copies of emergency contact information;

(C) Child medication records; and

(D) Individual children's medication, if applicable.

(vii) How the provider will maintain the required staff-to-child ratio and account for all children;

(viii) How parents or guardians will be able to contact the early learning program; and

(ix) How children will be reunited with their parents or guardians after the event.

(b) Earthquake procedures including:

(i) What a provider will do during an earthquake;

(ii) How a provider will account for all children; and

(iii) How a provider will coordinate with local or state officials to determine if the licensed space is safe for children after an earthquake.

(c) Public safety related lockdown scenarios where an individual at or near an early learning program is harming or attempting to harm others with or without a weapon. This plan must include lockdown of the early learning program or shelter-in-place steps including:

(i) How doors and windows will be secured to prevent access, if needed; and

(ii) Where children will safely stay inside the early learning program.

(d) How parents or guardians will be contacted after the emergency ends.

(3) An early learning provider must keep on the premises a three day supply of food, water, and life-sustaining medication for the licensed capacity of children and current staff for use in case of an emergency.

(4) An early learning provider must practice and record emergency drills with staff and children as follows:

(a) Fire and evacuation drill once each calendar month;

(b) Earthquake, lockdown, or shelter-in-place drill once every three calendar months;

(c) Emergency drills must be conducted with a variety of staff and at different times of the day, including in the evening and during overnight hours for early learning programs that care for children during those hours; and

(d) Drills must be recorded on a department form and include:

(i) The date and time of the drill;

(ii) The number of children and staff who participated;

(iii) The length of the drill; and

(iv) Notes about how the drill went and how it may be improved.

(5) In areas where local emergency plans are already in place, such as school districts, an early learning program may adopt or amend such procedures when developing their own plan.

NEW SECTION

WAC 170-300-0475 Duty to protect children and report incidents. (1) Pursuant to RCW 26.44.030, when an early learning provider has reasonable cause to believe that a child has suffered abuse or neglect, that provider must report such incident, or cause a report to be made, to the proper law enforcement agency or the department. "Abuse or neglect" has the same meaning here as in RCW 26.44.020.

(2) An early learning provider must report by phone upon knowledge of the following to:

(a) Law enforcement or the department at the first opportunity, but in no case longer than forty-eight hours:

(i) The death of a child while in the early learning program's care or the death from injury or illness that may have occurred while the child was in care;

(ii) A child's attempted suicide or talk about attempting suicide;

(iii) Any suspected physical, sexual or emotional child abuse;

(iv) Any suspected child neglect, child endangerment, or child exploitation;

(v) A child's disclosure of sexual or physical abuse; or

(vi) Inappropriate sexual contact between two or more children.

(b) Emergency services (911) immediately, and to the department within twenty-four hours:

(i) A child missing from care, triggered as soon as staff realizes the child is missing;

(ii) A medical emergency that requires immediate professional medical care;

(iii) A child who is given too much of any oral, inhaled, or injected medication;

(iv) A child who took or received another child's medication;

(v) A fire or other emergency;

(vi) Poisoning or suspected poisoning; or

(vii) Other dangers or incidents requiring emergency response.

(c) Washington poison center immediately after calling 911, and to the department within twenty-four hours:

(i) A poisoning or suspected poisoning;

(ii) A child who is given too much of any oral, inhaled, or injected medication; or

(iii) A child who took or received another child's medication;

(iv) The provider must follow any directions provided by Washington poison center.

(d) The local health jurisdiction or the department of health immediately, and to the department within twenty-four hours about an occurrence of food poisoning or reportable contagious disease as defined in chapter 246-110 WAC, as now or hereafter amended;

(e) The department at the first opportunity, but in no case longer than twenty-four hours, upon knowledge of any person required by chapter 110-06 WAC to have a change in their background check history due to:

(i) A pending charge or conviction for a crime listed in chapter 110-06 WAC;

(ii) An allegation or finding of child abuse, neglect, maltreatment or exploitation under chapter 26.44 RCW or chapter 388-15 WAC;

(iii) An allegation or finding of abuse or neglect of a vulnerable adult under chapter 74.34 RCW; or

(iv) A pending charge or conviction of a crime listed in the director's list in chapter 110-06 WAC from outside Washington state, or a "negative action" as defined in RCW 43.216.010.

(3) In addition to reporting to the department by phone or email, an early learning provider must submit a written incident report of the following on a department form within twenty-four hours:

(a) Situations that required an emergency response from emergency services (911), Washington poison center, or department of health;

(b) Situations that occur while children are in care that may put children at risk including, but not limited to, inappropriate sexual touching, neglect, physical abuse, maltreatment, or exploitation; and

(c) A serious injury to a child in care.

(4) An early learning provider must immediately report to the parent or guardian:

(a) Their child's death, serious injury, need for emergency or poison services; or

(b) An incident involving their child that was reported to the local health jurisdiction or the department of health.

NEW SECTION

WAC 170-300-0480 Transportation and off-site activity policy. (1) An early learning provider must have and follow a transportation and off-site activity policy for personal or public transportation service, or nonmotorized travel offered to children in care.

(a) The transportation and off-site activity policy must include routine trips, which must not exceed two hours per day for any individual child.

(b) Written parent or guardian authorization to transport the parent or guardian's child. The written authorization must be:

(i) A specific event, date, and anticipated travel time;

(ii) A specific type of trip (for example, transporting to and from school, or transporting to and from a field trip); or

(iii) A full range of trips a child may take while in the early learning provider's care.

(c) Written notices to parents or guardians, to be given at least twenty-four hours before field trips are taken.

(2) During travel to an off-site activity, an early learning provider must:

(a) Have the health history, appropriate medication (if applicable), emergency information, and emergency medical authorization forms accessible for each child being transported;

(b) Have a phone to call for emergency help;

(c) Have a complete first-aid kit;

(d) Maintain the staff-to-child ratio, mixed groupings, and active supervision requirements;

(e) Have at least one staff member currently certified in first aid and CPR supervise children;

(f) Take attendance using a roll call or other method that assures all children are accounted for each time children begin and end travel to an off-site activity, and every time children enter and exit a vehicle; and

(g) Never leave children unattended in the vehicle.

(3) When an early learning provider supplies the vehicle to transport children in care, the program and provider must:

(a) Follow chapter 46.61 RCW, Rules of the road, and other applicable laws regarding child restraints and car seats;

(b) Assure that the number of passengers does not exceed the seating capacity of the vehicle;

(c) Maintain the vehicle in good repair and safe operating condition;

(d) Maintain the vehicle temperature at a comfortable level to children;

(e) Assure the vehicle has a current license and registration as required by Washington state transportation laws;

(f) Assure the vehicle has emergency reflective triangles or other devices to alert other drivers of an emergency;

(g) Assure the driver has a valid driver's license for the type of vehicle being driven and a safe driving record for at least the last five years;

(h) Prevent any driver with a known condition that would compromise driving, supervision, or evacuation capabilities from operating program vehicles; and

(i) Have a current insurance policy that covers the driver, the vehicle, and all occupants.

NEW SECTION

WAC 170-300-0485 Termination of services policy.

An early learning provider may terminate a child's services due to that child's parent or guardian's inability to meet the expectations and requirements of the early learning program. Expectations and requirements of the program may include unpaid bills, continual late arrivals, or a parent, guardian or family member's inappropriate or unsafe behavior in or near early learning program space.

NEW SECTION

WAC 170-300-0486 Expulsion policy. (1) An early learning provider must have and follow an expulsion policy, pursuant to WAC 110-300-0340.

(2) An expulsion policy must:

(a) Provide examples of behavior that could lead to expulsion from the early learning program;

(b) Detail steps the provider takes to avoid expelling a child including, but not limited to, environmental and staffing changes;

(c) Detail how the provider communicates to the parent or guardian of a child the steps taken under (b) of this subsection; and

(d) Include information that may benefit an expelled child including, but not limited to, community based resources.

NEW SECTION

WAC 170-300-0490 Child restraint policy. (1) An early learning provider must have and follow a child restraint policy that contains behavior management and practices, pursuant to WAC 110-300-0335.

(2) A restraint policy must be:

(a) Appropriate for children's developmental level, abilities, and language skills;

(b) Directly related to the child's behavior; and

(c) Designed to be consistent, fair, and positive.

(3) Family home licensees, center directors, assistant directors, program supervisors, lead teachers and other appropriate staff members must be trained annually in the program's child restraint policy.

(4) Only trained staff may restrain a child in care in accordance with WAC 110-300-0335.

NEW SECTION

WAC 170-300-0495 Consistent care policy. (1) An early learning program must have and follow a policy that promotes the consistent care of children.

(2) When possible, an early learning provider must be assigned to work with a consistent group of children for much of the day with a goal of building long-term, trusting relationships.

NEW SECTION

WAC 170-300-0500 Health policy. (1) An early learning provider must have and follow a written health policy reviewed and approved by the department that includes the topics listed in subsection (2) of this section. The health policy must be reviewed and approved by the department when changes are made, and as otherwise necessary.

(2) An early learning program's health policy must meet the requirements of this chapter including, but not limited to:

- (a) A prevention of exposure to blood and body fluids plan;
- (b) Meals, snacks, and food services including guidelines for food allergies and food brought from home;
- (c) Handwashing and hand sanitizer use;
- (d) Observing children for signs of illness daily;
- (e) Exclusion and return of ill children, staff, or any other person in the program space;
- (f) Contagious disease notification;
- (g) Medical emergencies, injury treatment and reporting;
- (h) Immunization tracking;
- (i) Medication management, storage, administration and documentation;
- (j) Care for pets and animals that have access to licensed space and the health risks of interacting with pets and animals;
- (k) How general cleaning will be provided and how areas such as food contact surfaces, kitchen equipment, toys, toiletting equipment, and laundry will be cleaned, sanitized and disinfected;
- (l) Pest control policies;
- (m) Caring for children with special needs or health needs, including allergies, as listed in the child's record; and
- (n) Dental hygiene practices and education.

NEW SECTION

WAC 170-300-0505 Postings. (1) Postings listed in subsection (2) of this section that are part of an early learning program must be clearly visible to parents, guardians, and early learning program staff.

(2) Postings on early learning premises must include:

- (a) The child care license, pursuant to WAC 110-300-0010;
- (b) Floor plan with emergency routes and exits identified in each child care area, pursuant to WAC 110-300-0400 (1)(b)(i) and 110-300-0470 (2)(a)(i);
- (c) Dietary restrictions, known allergies, and nutrition requirements, if applicable, in a location easily accessible for staff but not available to those who are not parents or guard-

ians of the enrolled child, pursuant to WAC 110-300-0186(8);

(d) Handwashing practices at each handwashing sink, pursuant to WAC 110-300-0200(1);

(e) If applicable, diaper changing or stand-up diapering procedure at each diapering station, pursuant to WAC 110-300-0220 and 110-300-0221 (1)(d);

(f) Pesticide treatment, if applicable, pursuant to RCW 43.216.280 and 17.21.410 (1)(d);

(g) Emergency numbers and information including, but not limited to:

- (i) 911 or emergency services number;
- (ii) Name, address and directions from the nearest arterial street or nearest cross street to the facility;
- (iii) The department's toll-free number;
- (iv) Washington poison center toll-free number; and
- (v) The department's child protective services.

(h) The location of emergency medical information for children and staff;

(i) A notice of any current or pending enforcement action, including probationary licenses pursuant to RCW 43.216.687. Notice must be posted:

- (i) Immediately upon receipt; and
- (ii) For at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer.

(j) A notice of safe sleep violation in the licensed space as required by WAC 110-300-0291(2), if applicable;

(k) "No smoking" and "no vaping" signs, pursuant to WAC 110-300-0420 (2)(f);

(l) A copy of a department approved waiver or variance from a rule of this chapter, if applicable. Waivers or variances must be posted for parent or guardian view when related to the overall program (not related to any specific child), and as long as the waiver or variance is approved;

(m) Insurance coverage, or a lapse or termination of such coverage if applicable, pursuant to RCW 43.216.700; and

(n) Any other information listed in RCW 43.216.687.

WSR 18-14-081**PERMANENT RULES****HEALTH CARE AUTHORITY**

[Filed July 2, 2018, 9:37 a.m., effective August 2, 2018]

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

Purpose: The agency is revising this section to (1) clarify the clinical criteria for the rental of a back-up ventilator; (2) revise the authorization requirements for ventilators; and (3) remove the outdated clinical criteria for ventilators for clients seventeen years of age and younger.

Citation of Rules Affected by this Order: Amending WAC 182-552-1000.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 18-11-137 on May 23, 2018.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 2, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

WAC 182-552-1000 (~~Respiratory care~~) Covered—Respiratory and ventilator equipment and supplies. (1) The medicaid agency covers the rental of a ventilator, equipment, and (~~related~~) disposable ventilator supplies when the (~~ventilator is~~) client requires periodic or continuous mechanical ventilation for the treatment of chronic respiratory failure (~~chronic carbon dioxide retention~~) resulting from hypoxemia or hypercapnia.

(2) The (~~medicaid~~) agency's payment for the monthly rental (~~rate~~) includes ventilator maintenance and accessories including, but not limited to, humidifiers, nebulizers, alarms, temperature probes, batteries, chargers, adapters, connectors, fittings, tubing, disposable circuits, and filters. The (~~medicaid~~) agency does not pay separately for ventilator accessories unless the client owns the ventilator system, see subsection (5) of this section.

(3) To receive payment, ventilators, equipment, and related disposable supplies must:

(a) Be used exclusively by the client for whom it is requested;

(b) Be FDA-approved; and

(c) Not be included in any other reimbursement methodology such as, but not limited to, a diagnosis-related group (DRG).

(4) The (~~medicaid~~) agency pays for a back-up (secondary) ventilator at fifty percent of the monthly rental rate when one or more of the following clinical criteria are met:

(a) The client cannot maintain spontaneous or adequate ventilations for four or more consecutive hours;

(b) The client lives in an area where a replacement ventilator cannot be provided within two hours;

(c) The client requires mechanical ventilation during mobility as prescribed in their plan of care.

(5) The (~~medicaid~~) agency pays for the purchase of the following replacement ventilator accessories only for client-owned ventilator systems:

(a) Gel-cell battery charger - One every twenty-four months;

(b) (~~Gel-cell~~) Gel-cell heavy-duty battery - One every twenty-four months;

(c) Battery cables - Once every twenty-four months; and

(d) Breathing circuits - Four every thirty days.

(6) (~~Pressure support ventilators—~~

(a) ~~For clients eighteen years of age and older, the medicaid agency requires prior authorization;~~

(b) ~~For clients seventeen years of age and younger, the medicaid agency requires expedited prior authorization (EPA).~~

(i) ~~The following criteria must be met in order to use the EPA process:~~

(A) ~~The client is currently using a pressure support ventilator;~~

(B) ~~The client must be able to take spontaneous breaths;~~

(C) ~~There must be an authorized prescriber's order for the pressure support setting; and~~

(D) ~~The client must be utilizing the ventilator in the pressure support mode.~~

(ii) ~~If the client has no clinical potential for weaning, the medicaid agency's EPA is valid for twelve months; or~~

(iii) ~~If the client has the potential to be weaned, then the medicaid agency's EPA is valid for six months;~~

(iv) ~~To continue using EPA after the valid time period has lapsed, a vendor must document in the client's file that the client continues to meet the EPA criteria for a pressure support ventilator.)~~ All ventilators require expedited prior authorization (EPA), as described in WAC 182-552-1375.

(a) At the time of authorization, the following information must be documented in the client's record and made available to the agency upon request:

(i) Medical history, unless request is for continuation of services;

(ii) Diagnosis and degree of impairment;

(iii) Degree of ventilatory support required; and

(iv) Ventilator settings and parameters including mode and type of ventilator ordered at the time of the authorization.

(b) If the client has no clinical potential for being weaned from ventilatory support, the EPA is valid for twelve months;

(c) If the client has the potential to be weaned, the EPA is valid for six months.

WSR 18-14-089

PERMANENT RULES

DEPARTMENT OF HEALTH

(Podiatric Medical Board)

[Filed July 2, 2018, 12:30 p.m., effective August 2, 2018]

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

Purpose: WAC 246-922-001 Scope of practice and 246-922-055 Reciprocity requirements, the podiatric medical board adopted amendments to make technical corrections to two rule sections for podiatric physicians. WAC 246-922-001 incorrectly cited RCW 18.22.010 and the adopted amendment now correctly cites RCW 18.22.035. The adopted amendment also corrects WAC 246-922-055 to match the statutory language in RCW 18.22.082.

Citation of Rules Affected by this Order: Amending WAC 246-922-001 and 246-922-055.

Statutory Authority for Adoption: RCW 18.22.015 and 18.130.050.

Other Authority: RCW 18.22.005.

Adopted under notice filed as WSR 18-05-085 on February 20, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: April 25, 2018.

Randy Anderson, DPM
Board Chair

AMENDATORY SECTION (Amending WSR 07-13-071, filed 6/18/07, effective 7/19/07)

WAC 246-922-001 Scope of practice. (1) An "ailment of the human foot" as set forth in RCW (~~(18.22.010)~~) 18.22.035 is defined as any condition, symptom, disease, complaint, or disability involving the functional foot. The functional foot includes the anatomical foot and any muscle, tendon, ligament, or other soft tissue structure directly attached to the anatomical foot and which impacts upon or affects the foot or foot function and osseous structure up to and including the articulating surfaces of the ankle joint.

(2) In diagnosing or treating the ailments of the functional foot, a podiatric physician and surgeon is entitled to utilize medical, surgical, mechanical, manipulative, radiological, and electrical treatment methods and the diagnostic procedure or treatment method may be utilized upon an anatomical location other than the functional foot. The diagnosis and treatment of the foot includes diagnosis and treatment necessary for preventive care of the well foot.

(3) A podiatric physician and surgeon may examine, diagnose, and commence treatment of ailments for which differential diagnoses include an ailment of the human foot. Upon determination that the condition presented is not an ailment of the human foot, the podiatric physician and surgeon shall obtain an appropriate consultation or make an appropriate referral to a licensed health care practitioner authorized by law to treat systemic conditions. The podiatric physician and surgeon may take emergency actions as are reasonably necessary to protect the patient's health until the intervention of a licensed health care practitioner authorized by law to treat systemic conditions.

(4) A podiatric physician and surgeon may diagnose or treat an ailment of the human foot caused by a systemic condition provided an appropriate consultation or referral for the

systemic condition is made to a licensed health care practitioner authorized by law to treat systemic conditions.

(5) A podiatric physician and surgeon shall not administer a general or spinal anesthetic, however, a podiatric physician and surgeon may treat ailments of the human foot when the treatment requires use of a general or spinal anesthetic provided that the administration of the general or spinal anesthetic is by a physician authorized under chapter 18.71 or 18.57 RCW; or a certified registered nurse anesthetist authorized under chapter 18.79 RCW.

AMENDATORY SECTION (Amending WSR 91-10-041, filed 4/25/91, effective 5/26/91)

WAC 246-922-055 Reciprocity requirements. An applicant licensed in another state must file with the secretary verification of the license certified by the proper authorities of the issuing state to include the issue date, license number, current expiration date, and whether any action has been taken to revoke, suspend, restrict, or otherwise sanction the licensee for unprofessional conduct or that the licensee may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a physical or mental condition. The applicant must document that the educational standards, eligibility requirements, and examinations of that state are ~~((at least equal in all respects))~~ substantially equivalent to those of this state.

WSR 18-14-095

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 3, 2018, 9:13 a.m., effective August 3, 2018]

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

Purpose: WAC 458-19-005 is being amended to incorporate language from:

- HB 1940 (2015) that explains prorating for flood control zone districts;
- 2ESSB 5987 (2015) that describes prorating for regional transit authorities;
- SHB 1467 (2017) that explains prorating for regional fire protection service authorities; and
- EHB 2242 (2017) that provides for basic education funding.

WAC 458-19-010 and 458-19-020 are being amended to incorporate language from:

- EHB 2242 (2017) that provides for basic education funding.

Citation of Rules Affected by this Order: Amending WAC 458-19-005 Definitions, 458-19-010 Levy limit and levy rate calculations, and 458-19-020 Levy limit—Method of calculation.

Statutory Authority for Adoption: RCW 84.52.0502 and 84.55.060.

Adopted under notice filed as WSR 18-10-032 on April 25, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: July 3, 2018.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-087, filed 1/21/15, effective 2/21/15)

WAC 458-19-005 Definitions. (1) **Introduction.** This rule contains definitions of the terms used throughout chapters 84.52 and 84.55 RCW and chapter 458-19 WAC in the administration of the system used to levy property taxes on taxable property within the state of Washington.

(2) Unless the context clearly requires otherwise, the following definitions apply:

(a) "Annexation" means one taxing district is adding territory or another dissimilar taxing district from outside the annexing taxing district's boundary and includes a merger of a portion of a fire protection district under chapter 52.06 RCW with another fire protection district.

(b) "Assessed value" means the value of taxable property placed on the assessment rolls. The term is often abbreviated with the initials "A.V."

(c) "Certified property tax levy rate" means the tax rate calculated by the county assessor in accordance with law to produce the lawful amount of the certified property tax levy.

(d) "Consolidated levy rate" means:

(i) For purposes of the statutory aggregate dollar rate levy limit, the sum of all regular levy rates set for collection exclusive of rates set for the state levy, port, public utility districts, financing affordable housing for very low-income households under RCW 84.52.105, acquiring conservation futures under RCW 84.34.230, criminal justice purposes under RCW 84.52.135, emergency medical care or emergency medical services under RCW 84.52.069, county ferry districts under RCW 36.54.130, the portions of the fire protection and regional fire protection service authority levies protected under RCW 84.52.125, the portion of metropolitan park district levies protected under RCW 84.52.120, transit-related purposes under RCW 84.52.140, ~~((and))~~ the protected portion of the levies imposed under RCW ~~((86.15.160))~~ 84.52.816 by flood control zone districts ~~((in a county with a population of seven hundred seventy five thousand or more that are coextensive with a county))~~, and levies imposed by a regional transit authority under RCW 81.104.175; and

(ii) For purposes of the constitutional one percent limit, the sum of all regular levy rates set for collection exclusive of rates set for port and public utility districts.

(e) "Consolidation" means the act of combining two or more similar taxing districts into one taxing district; for example, the combination of two fire protection districts into one fire protection district.

(f) "Constitutional one percent limit" means the levy limit established by Article VII, section 2 of the state Constitution, which prohibits the aggregate of all tax levies on real and personal property from exceeding one percent (\$10 per \$1,000) of the true and fair value of property. This limit does not apply to excess levies, levies by port districts, and levies by public utility districts. This limit is also set forth in RCW 84.52.050.

(g) "Department" means the department of revenue of the state of Washington.

(h) "Excess property tax levy" or "excess levy" means a voter-approved property tax levy by or for a taxing district, other than a port or public utility district, that is subject to neither the statutory aggregate dollar rate limit set forth in RCW 84.52.043 nor the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and in RCW 84.52.050. It does not include regular levies allowed to exceed the levy limit with voter approval.

(i) "Improvement" means any valuable change in or addition to real property, including the subdivision or segregation of parcels of real property or the merger of parcels of real property.

(j) "Inflation" means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the Federal Department of Commerce by September 25th of the year before the taxes are payable; see RCW 84.55.005.

(k) "Joint taxing district" means a taxing district that exists in two or more counties; the term does not include the state nor does it include an intercounty rural library district.

(l) "Junior taxing district" means a taxing district other than the state, a county, a county road district, a city, a town, a port district, or a public utility district.

(m) "Levy limit" means:

(i) The statutorily established limit that prohibits a taxing district, other than the state, from levying regular property taxes for a particular year that exceed the limit factor multiplied by the highest amount of regular property taxes that could have been lawfully levied in the taxing district in any year since 1985, plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year, or the last year the taxing district levied taxes, by the increase in assessed value in the taxing district resulting from:

(A) New construction;

(B) Improvements to property;

(C) Increases in the assessed value of state assessed property; and

(D) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of

providing an additional dollar amount. The property may be classified as real or personal property.

(ii) For purposes of the levy limit, the phrase "highest amount of regular property taxes that could have been lawfully levied" means the maximum amount that could have been levied by a taxing district under the limitation set forth in chapter 84.55 RCW unless the highest amount that could have been levied was actually restricted by the taxing district's statutory dollar rate limit. If the taxing district's levy was restricted by the statutory dollar rate limit, the highest amount that could have been lawfully levied is the amount produced by multiplying the assessed value of the taxing district by the statutory dollar rate.

(iii) For purposes of the levy limit, the regular property tax levy rate of the district for the preceding year, or the last year the taxing district levied taxes, may reflect a reduced rate due to the \$5.90 statutory aggregate limitation and/or the constitutional one percent limitation, if prorating occurred in the district.

The regular property tax levy rate of the district for the preceding year may also reflect a levy error or a levy error correction. If this occurs, the rate used will be the rate had the levy error or levy error correction not occurred. RCW 84.52.-085.

(iv) The levy limit for the state is the ~~((limit factor multiplied by the highest amount of regular property taxes lawfully levied in the three most recent years, plus an additional dollar amount calculated by multiplying the state levy rate for the preceding year by the increase in assessed value in the state resulting from:~~

~~(A) New construction;~~

~~(B) Improvements to property;~~

~~(C) Increases in the assessed value of state assessed property; and~~

~~(D) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property)) amount calculated under WAC 458-19-550.~~

(n) "Levy rate" means the dollar amount per thousand dollars of assessed value applied to taxable property within a taxing district and is calculated by dividing the total amount of a statutorily authorized levy of a taxing district by the total assessed value of that district and is expressed in dollars and cents per thousand dollars of assessed value.

(o) "Limit factor" means:

(i) For taxing districts with a population of less than ten thousand in the calendar year immediately prior to the assessment year, one hundred one percent;

(ii) For taxing districts, other than the state, having made a finding of substantial need in accordance with RCW 84.55.-0101, the lesser of the substantial need factor or one hundred one percent; ~~((or))~~

(iii) For all other taxing districts, ~~((including))~~ excluding the state, the lesser of one hundred one percent or one hundred percent plus inflation; or

(iv) For the state, the limits described in WAC 458-19-550.

(p) "New construction" means the construction or alteration of any property for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits, which results in an increase in the value of the property.

(q) "Regular property tax levy" or "regular levy" means a property tax levy by or for a taxing district that is subject to the statutory aggregate dollar rate limit set forth in RCW 84.52.043, the constitutional one percent limit set forth in RCW 84.52.050, or is a levy imposed by or for a port district or a public utility district.

(r) "Regular property taxes" means those taxes resulting from regular property tax levies.

(s) "Senior taxing district" means the state (for support of common schools), a county, a county road district, a city, or a town.

(t) "Statutory aggregate dollar rate limit" or "statutory aggregate limit" means the maximum aggregate regular property tax levy rate within a county established by law for senior and junior taxing districts, other than the state. The current limit is \$5.90 per \$1,000 of assessed valuation. See RCW 84.52.043 and WAC 458-19-070.

(u) "Substantial need limit factor" means a limit factor approved by a taxing district's legislative authority that exceeds one hundred percent plus inflation. This limit cannot exceed one hundred one percent.

(v) "Statutory dollar rate limit" means the maximum regular property tax levy rate established by law for a particular type of taxing district.

(w) "Super majority" means a majority of at least three-fifths of the registered voters of a taxing district approving a proposition authorizing a levy, at which election the number of persons voting "yes" on the proposition constitutes three-fifths of a number equal to forty percent of the total votes cast in the taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters of the taxing district voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total votes cast in the taxing district in the last preceding general election.

(x) "Tax code area" means a geographical area made up of one or more taxing districts, which is established for the purpose of properly calculating, collecting, and distributing taxes. Only one tax code area will have the same combination of taxing districts, with limited exceptions.

(y) "Taxing district" means the state and any county, city, town, port district, school district, road district, metropolitan park district, regional transit authority, water-sewer district, or other municipal corporation, having the power or legal authority to impose burdens upon property within the district on an ad valorem basis, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed for public purposes, on property in proportion to the increase in benefits received.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-010 Levy limit and levy rate calculations. (1) **Introduction.** This rule explains two of the basic steps in the levy setting process. First, who determines the levy limit for all taxing districts and second, who calculates the levy rate for the various taxing districts.

(2) **Who determines the levy limit?** The assessor generally determines the levy limit for all taxing districts levying regular property taxes. However, the levy limit for joint taxing districts, intercounty rural library districts, and the state is determined as follows:

(a) Joint taxing districts. The levy limit for joint taxing districts is determined by the assessor of the county in which the greatest amount of assessed value of the joint taxing district is located;

(b) Intercounty rural library districts. The levy limit for intercounty rural library districts is determined by the board of trustees of the intercounty rural library district in consultation with the assessors of the counties served by the district; and

(c) State levy. The levy limit for the state is determined by the department. Additional information regarding the levy limit for the state can be found in WAC 458-19-550.

(3) **Who sets levy rates?** The assessor generally calculates the property tax levy rate necessary to collect the amount of taxes levied by or for each taxing district, including the state, within the limitations provided by law. However, the levy rate for joint taxing districts and intercounty rural library districts is calculated as follows:

(a) Joint taxing districts. The assessor of the county in which the greatest amount of assessed value of the joint taxing district is located calculates the levy rate; and

(b) Intercounty rural library districts. The board of trustees of an intercounty rural library district calculates the levy rate for the intercounty rural library district in consultation with the assessors of the counties served by the district and certifies that rate to the respective county legislative authorities.

AMENDATORY SECTION (Amending WSR 15-03-087, filed 1/21/15, effective 2/21/15)

WAC 458-19-020 Levy limit—Method of calculation.

(1) **Introduction.** This rule explains the general method used to calculate the levy limit for ~~((the state and all other))~~ regular property tax levies for taxing districts, other than the state, in accordance with RCW ~~((84.55.010,))~~ 84.55.092~~((;))~~ and 84.55.120. Except for the state levy, the same method is generally used to calculate the amount of regular property taxes that can be levied by a taxing district in any year. This rule also describes what occurs when a taxing district makes a finding of substantial need in accordance with RCW 84.55.-0101 to use a limit factor in excess of one hundred percent plus inflation. This rule does not attempt to include all special circumstances ~~((that))~~, such as the reduction in the levy limit for cities and towns that form a fire protection district under RCW 52.02.160, which may affect the applicable limit under chapter 84.55 RCW.

(2) **Increase in tax revenues - Ordinance or resolution required.** The following describes the ordinance or resolution required by taxing districts when requesting increases in tax revenues.

(a) Except by holding a public hearing and adopting an ordinance or resolution, no taxing district, other than the state, may authorize an increase in property tax revenue, other than one resulting from an increase in assessed value of the district attributable to:

(i) New construction;

(ii) Improvements to property;

(iii) Increases in the assessed value of state assessed property; and

(iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(b) The ordinance or resolution may cover a period of up to two years, but the ordinance or resolution must specifically state for each year the dollar increase and percentage change in the levy from the previous year. The dollar increase and percentage change should reflect everything included in the levy limit and should not reflect anything excluded under chapter 84.55 RCW (such as, but not limited to, a levy for property tax refunds paid under the provisions of chapter 84.68 or 84.69 RCW).

(c) A majority of the legislative authority of a taxing district must approve the ordinance or resolution authorizing an increase in the taxing district's levy as calculated in subsection (3) of this rule.

(d) Upon making a finding of substantial need to increase its levy by an amount greater than the rate of inflation, the legislative authority of a taxing district may adopt a second ordinance or resolution establishing a limit factor greater than one hundred percent plus inflation. But the substantial need limit factor can never exceed one hundred one percent.

(i) In districts with legislative authorities of four members or less, two-thirds of the members must approve an ordinance or resolution supporting a substantial need to increase the limit factor.

(ii) In districts with more than four members, a majority plus one must approve an ordinance or resolution supporting a substantial need to increase the limit factor.

(3) **Calculation of levy limit for all taxing districts other than the state.** The amount of regular property taxes that can be levied by a taxing district, other than the state, in any year is limited to an amount that will not exceed the amount resulting from the following calculation, except as otherwise provided by statute:

(a) The highest amount that could have been lawfully levied by the taxing district in any year since 1985 for 1986 collection, multiplied by the limit factor; plus

(b) A dollar amount calculated by multiplying the regular property tax levy rate of the district for the preceding year, or the last year the taxing district levied taxes, by the increase in assessed value of the district resulting from:

(i) New construction;

- (ii) Improvements to property;
- (iii) Increases in the assessed value of state assessed property; and
- (iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.

(4) **Calculation of levy limit for the state levy.** The levy limit for the state is calculated (~~in the same manner as for other taxing districts except that the limit factor is multiplied by the highest amount that was lawfully levied by the state in the three most recent years in which such taxes were levied~~) according to WAC 458-19-550.

WSR 18-14-101
PERMANENT RULES
DEPARTMENT OF
SERVICES FOR THE BLIND

[Filed July 3, 2018, 11:22 a.m., effective August 3, 2018]

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

Purpose: Proposed changes align agency policy with relevant changes to federal Rehabilitation Act as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA). Substantive changes include: Additional defined terms; required coordination with other federally funded workforce development system partner agencies; clarity on concept of informed choice; required timeline and process changes for eligibility and planned services, including additional consideration of career advancement and deletion of extended evaluation; clarity on competitive and integrated employment concepts; categorization of significance of disability and order of selection criteria; addition of preemployment transition services; items exempt or require comparable benefit consideration; expanded technical assistance for self-employment; added detail about state rehabilitation council; clarity on purpose of background checks for participants; and updated terminology and processes for the agency.

Citation of Rules Affected by this Order: Amending chapters 67-25, 67-16, and 67-10 WAC.

Statutory Authority for Adoption: WIOA (H.R. 803; Pub.L. 113-128) is a United States public law that incorporates the Rehabilitation Act of 1973 as amended and consolidates job training programs under the Workforce Investment Act of 1998 into a single funding stream.

Other Authority: Federal regulations: 34 C.F.R. Part 361.

Adopted under notice filed as WSR 18-11-090 on May 18, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 9, Amended 46, Repealed 5; Federal Rules or Standards: New 9, Amended 46, Repealed 5; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 8, Repealed 6.

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

Date Adopted: July 3, 2018.

Michael MacKillop
Deputy Director

AMENDATORY SECTION (Amending WSR 84-01-040, filed 12/15/83)

WAC 67-10-010 Purpose. The department of services for the blind is an agency of state government created by chapter 194, Laws of 1983. It shall hereafter in this chapter be referred to as the "department." The chief executive officer of the department is the director. The director shall be appointed by the governor, with the consent of the senate.

The state rehabilitation council for the blind has the role of advising the department on issues affecting blind individuals across the state (reference WAC 67-10-025). The members are appointed by the governor. Terms are for a period of three years. State rehabilitation council members elect one of their members as chair for a term of one year.

The department's programs provide services statewide. The department has offices located throughout the state.

NEW SECTION

WAC 67-10-025 State rehabilitation council for the blind. (1) The purpose of the state rehabilitation council for the blind is to:

- Review, analyze, and advise the department of its responsibilities under The Rehabilitation Act of 1973 including, vocational rehabilitation, business enterprise program, and independent living services;
- Partner with the department in the development and review of the VR state plan goals and priorities, the DSB strategic plan, reports, needs assessments, and program evaluation;
- Conduct a review and analysis of consumer satisfaction as it relates to the functions performed by the department, the services delivered, and outcomes achieved;
- Prepare and submit an annual report to the governor and the RSA commissioner, and make the report available to the public;
- Coordinate with other councils, as specified by The Rehabilitation Act of 1973, including, the state independent living council and centers for independent living;
- Advocate for people who are blind by making recommendations to the governor and the legislature on issues related to the department, other state agencies, or state laws which have a significant effect on the opportunities, services, or rights of blind persons;

• Advise and make recommendations to the governor on the criteria and qualifications pertinent to the selection of the department director;

• Perform other functions consistent with The Rehabilitation Act of 1973, comparable to other functions performed by the council, determined by the council.

(2) Members of the state rehabilitation council for the blind shall be appointed by the governor considering geographic representation, gender, ethnicity and other unique characteristics. Individuals who are blind must constitute a majority of the council.

Membership must also include the following represented groups:

- A consumer organization of the blind; two current or former recipients of vocational rehabilitation services;
- Four representatives of business, labor and industry;
- The state workforce investment board;
- The client assistance program;
- The parent information and training center;
- A current or former qualified vocational rehabilitation counselor who shall be a nonvoting member if currently employed by the department;
- A community rehabilitation program;
- The tribal vocational rehabilitation program;
- The office of the superintendent of public instruction;
- A representative of individuals who are blind who have difficulty representing themselves or are unable, due to their disabilities, to represent themselves;
- The Washington state independent living council;
- The executive director of the department who shall be a nonvoting member.

(3) Members are appointed to the state rehabilitation council for the blind for a term of three years. Members may seek reappointment for a second term. No member may serve more than two consecutive full terms, except for the CAP and tribal representative positions, or unless the governor finds it necessary to extend a position for a specified time in order to achieve required representation. If a vacancy occurs due to resignation or withdrawal prior to the end date of the term, the governor may appoint a new member who will serve out the remainder of the position's term to its scheduled end date. A member's term may be ended at any time by the governor.

AMENDATORY SECTION (Amending WSR 88-09-006, filed 4/11/88)

WAC 67-10-060 Public records officer. The public records officer for the department shall be ~~((the deputy director, as designated))~~ appointed by the director, for all records maintained by the department whether located at the ~~((central))~~ headquarters office ~~((thereof at Olympia, Washington,))~~ or at such other offices throughout the state maintained by the department. The public records officer shall be located at such central office. The public records officer shall be responsible for implementation of this chapter regarding release of public records, coordinating the staff of the department in this regard, generally insuring compliance by the staff with the public records disclosure requirements of RCW 42.17.250 through 42.17.320, and maintaining the records index of the department as required.

AMENDATORY SECTION (Amending WSR 84-01-040, filed 12/15/83)

WAC 67-10-080 Office hours. Public records shall be available for inspection and copying during the customary office hours of the department. For purposes of this chapter, the customary office hours shall be from 8:00 a.m. to ~~((4:30))~~ 5:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 84-01-040, filed 12/15/83)

WAC 67-10-170 ~~((Form 1—Request for inspection of records.))~~ Public records request.

((.....
Request number

.....
Date requested

.....
Date provided

.....
(For office use only)

WASHINGTON DEPARTMENT OF SERVICES FOR THE BLIND
Request for Inspection of Records

The information requested in Blocks 1 through 6 is not mandatory, however, the completion of these blocks will enable this office to expedite your request and contact you should the record you seek not be immediately available.

- | | |
|-------------|---------------------------------|
| 1. Name | 4. Phone number |
| 2. Address | 5. Representing (if applicable) |
| 3. Zip code | 6. If urgent—date needed |

Below please state what record(s) you wish to inspect and be as specific as possible. If you are uncertain as to the type or identification of specific record or records we will assist you.

I certify that the information requested from the above record(s) will not be part of a list of individuals to be used for commercial purposes.

Signed.....
Date

A public records request form is available for inspection of records and copies of information requested. The requestor provides contact information including name, phone number, address, email address, and a description of the records.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 67-10-020	Description of organization of the department.
WAC 67-10-030	Location of established places.
WAC 67-10-040	Operations and procedures.
WAC 67-10-160	Adoption of forms.
WAC 67-10-180	Form 2—Request for photocopy of record(s).

AMENDATORY SECTION (Amending WSR 84-01-041, filed 12/15/83)

WAC 67-16-010 Physical and informational accessibility. ~~((1) No otherwise qualified handicapped individual shall, solely by reason of handicap, be excluded from participation, be denied benefits of, or be subjected to discrimination under any department provided program or activity.~~

~~(2) No handicapped person will be subjected to discrimination because department provided facilities are inaccessible to or unusable by handicapped persons. Any construction or alteration to any present or future locations or facility, on behalf of or for the use of the department, will be readily accessible to and useable by handicapped persons.~~

~~(3) No person shall be denied access to department information, records or materials solely on the basis of his/her inability to utilize such information, records or materials in a customary manner.)~~ (1) It is the policy of the department of services for the blind that persons shall not be discriminated against (in employment or service) because of race, color, creed, religion, national origin, sexual orientation, age, sex, presence of any sensory, mental, or physical disability, or use of a trained dog guide or service animal by a person with a disability, disabled veteran status or Vietnam era veteran status, recently separated veteran status, or other protected veteran status and (in employment only) because of marital status.

(2) It is a violation of this nondiscrimination policy when inequitable practices, based on factors listed in subsection (1) of this section, occur in service delivery or employment. Some of these practices include: Denial of services or benefits; refusal to hire or promote; failure to provide appropriate interpreter services including American sign language (ASL); limiting access to services because of inaccessible facilities; failure to make reasonable accommodations to allow full participation of persons with disabilities in all programs, activities, and services; denial of the opportunity to act as a consultant or volunteer, or serve on committees and boards.

(3) The department nondiscrimination policy is consistent with Titles VI and VII of the Civil Rights Act of 1964, as amended in 1972; Executive Order 11250; sections 503 and 504 of The Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975; the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act, as amended; the Americans

With Disabilities Act of 1990; the Civil Rights Act of 1991; the Washington State Law Against Discrimination, chapter 49.60 RCW; Affirmative Action, chapter 49.74 RCW; and Policy 188 - Accessibility, Office of the Chief Information Officer.

AMENDATORY SECTION (Amending WSR 04-12-029, filed 5/26/04, effective 7/1/04)

WAC 67-16-020 Purpose and definition. The authority for conducting background checks on contractors and service providers is established in chapter 74.18 RCW. The purpose for background checks is to ensure the suitability, character and competence of contractors and service providers to work with ~~((clients))~~ agency participants with a visual disability as defined in WAC 67-25-009, 67-35-030, 67-55-040, and/or 67-75-040 ~~((a))~~.

AMENDATORY SECTION (Amending WSR 10-19-081, filed 9/16/10, effective 10/17/10)

WAC 67-16-030 Background check process for contractors, vendors, and service providers. (1) The director of the department of services for the blind (DSB) shall investigate the conviction records, pending charges and disciplinary board final decisions for contractors, vendors, and service providers who will or may have unsupervised access to DSB ~~((clients))~~ participants.

(2) The investigation shall consist of a background check as allowed under the Washington State Criminal Records Privacy Act, RCW 10.97.050; the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the Federal Bureau of Investigation. The background check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card.

(3) The director may waive the requirement for a background check if the contractor, vendor, or service provider has been cleared in a background check within the previous two years.

(4) When necessary, the director may engage a service provider, vendor, or contractor on a conditional basis, pending completion of the background check.

(5) The investigation shall include an examination of state and national criminal identification data. The director shall use the information solely for the purpose of determining the character, suitability and competence of the individual contractor or service provider to work with the department of services for the blind ~~((clients))~~ participants.

(6) The director shall provide the results of the background check in writing to the contractor, vendor, or service provider.

(7) The office of the director shall maintain confidential records of all background check information. Such information shall be limited to only those individuals processing the information within the department.

(8) The fingerprint criminal history records checks will be at the expense of the contractor or service provider.

(9) Current contractors, vendors, or service providers for whom disqualifying crimes are discovered in the background check process will be notified in writing. The written notifi-

cation shall include notice of termination of the contract or service provider agreement and give the individual the right to request a review by the director of the department of services for the blind.

AMENDATORY SECTION (Amending WSR 10-19-081, filed 9/16/10, effective 10/17/10)

WAC 67-16-040 Department of services for the blind —Background check requirements for employees, applicants, volunteers and student interns. (1) The executive director of the department of services for the blind shall conduct background checks on all employees in covered positions and applicants under final consideration for a covered position. A covered position is one in which a person will or may have unsupervised access to vulnerable ~~((clients))~~ participants or potential ~~((clients))~~ participants with vision disability. These ~~((clients))~~ participants or potential ~~((clients))~~ participants may also have other disabilities, such as developmental disabilities or mental health disabilities. Employees and applicants shall authorize the executive director of the department of services for the blind to conduct a background check.

(2) The requirement for background checks shall include the following:

(a) ~~((Current employees as of July 1, 2004.~~

~~((b)))~~ Any employee seeking a covered position because of a reduction in force, reallocation, transfer, promotion or demotion.

~~((c)))~~ (b) Any applicant prior to appointment into a covered position, except when appointment is made on a conditional basis under subsection (7)(b) of this section.

(3) A background check will be conducted on the final preferred candidate prior to appointment.

(4) The executive director of the department of services for the blind shall use the results of a background check solely to determine the character, competence and suitability of a person for a covered position. The background check information shall consist of:

(a) A fingerprint check using a complete Washington state criminal identification fingerprint card.

(b) Conviction records, pending charges, and disciplinary board final decisions (if applicable).

(c) Evidence that substantiates or mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

(i) The employee or applicant's background check authorization and disclosure form;

(ii) The employee or applicant's age at the time of conviction, charge, or disciplinary board final decision;

(iii) The nature and severity of the conviction, charge, or disciplinary board final decision;

(iv) The length of time since the conviction, charge, or disciplinary board final decisions;

(v) The nature and number of previous offenses; and

(vi) The relationship between the nature of the conviction, pending charge, or disciplinary board final decision and the duties of the employee or applicant.

(5) A permanent employee with a background check disqualification may voluntarily resign, or be subject to disciplinary action in accordance with WAC 357-40-010.

(6) Interim measures that may be used while the executive director explores availability of actions (not to exceed ~~((30))~~ thirty calendar days except in cases where there are investigations of pending charges):

(a) Voluntary use of accrued vacation, exchange, and/or compensatory time.

(b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave.

When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(7) The executive director of the department of services for the blind shall:

(a) Notify employees and applicants that a background check is required for covered positions;

(b) Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and

(c) Develop policies and procedures pertaining to background checks;

(d) Provide the employee/applicant with the results of the background check in writing;

(e) Notify employees of their promotional register rights when they have been separated from their position, either voluntarily or involuntarily due to a background disqualification.

(8) Failure to authorize the executive director of the department of services for the blind to conduct a background check disqualifies an employee or applicant from consideration for any covered position including an employee's current covered position.

(9) An applicant for a covered position who is denied employment due to a disqualifying finding, shall be given the right to request a review of the decision by the executive director.

Requests for review must be in writing and received by the executive director within fifteen calendar days of the postmark date of the notification or date of hand-delivery.

(10) Permanent nonrepresented employees may appeal to the personnel resources board in accordance with RCW 41.06.170 and rules promulgated thereunder including WAC 357-52-010. Represented employees may appeal to the Washington state federation of state employees under the terms of the collective bargaining agreement.

(11) Nothing in this rule shall limit the department of services for the blind executive director's use of other authorities to conduct background checks.

(12) Information pertaining to background checks is confidential and shall be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee. Access to background check information shall be limited to only those individuals processing the information for the department. Misuse of background check information is a criminal offense and may result in prosecution and/or disciplinary action as provided under WAC 357-40-010.

(13) The department of services for the blind will pay the costs associated with the background checks for current employees, applicants, volunteers, and student interns.

NEW SECTION

WAC 67-16-050 Background check requirements for participants. Background checks may be secured as a vocational rehabilitation assessment service for a participant who is seeking employment in a field that customarily requires a background check as a condition of employment. The department may obtain a criminal history background check verifying that the customer is not excluded from employment in the field or specific job as part of the participant's informed choice in exploring or selecting an employment goal.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-005 Definitions. (1) "Act" or "the law," except when context indicates otherwise, means the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA) of 2014.

(2) "Administrative costs" under the vocational rehabilitation services portion of the unified or combined state plan means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program, including expenses related to program planning, development, monitoring, and evaluation including, but not limited to, expenses for:

(a) Quality assurance;

(b) Budgeting, accounting, financial management, information systems, and related data processing;

(c) Providing information about the program to the public;

(d) Technical assistance and support services to other state agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in C.F.R. Sec. 361.49 (a)(4);

(e) The state rehabilitation council and other advisory committees;

(f) Professional organization membership dues for designated state unit employees;

(g) The removal of architectural barriers in state vocational rehabilitation agency offices and state-operated rehabilitation facilities;

(h) Operating and maintaining designated state unit facilities, equipment, and grounds, as well as the infrastructure of the one-stop system;

(i) Supplies;

(j) Administration of the comprehensive system of personnel development personnel administration, administration of affirmative action plans, and training and staff development;

(k) Administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;

(l) Travel costs related to carrying out the program, other than travel costs related to the provision of services;

(m) Costs incurred in conducting reviews of determinations made by personnel of the designated state unit, including costs associated with mediation and impartial due process hearings; and

(n) Legal expenses required in the administration of the program.

(3) "Applicant" means an individual who has submitted to the department an application or letter requesting vocational rehabilitation services in accordance with WAC ((67-25-010)) 67-25-093.

((3)) (4) "Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

((4)) (5) "Assessment" means a review of existing or additional data for one or more of the following (as appropriate in each case):

(a) An assessment to determine eligibility of an individual with a disability for vocational rehabilitation services in accordance with WAC ((67-25-020)) 67-25-130;

(b) A comprehensive assessment to determine with the individual the employment outcome to be achieved and a detailed plan of services needed to obtain the employment outcome, in accordance with WAC ((67-25-255, to determine with the individual the employment outcome to be achieved, and a detailed plan of services needed to obtain the employment outcome)) 67-25-205;

(c) An assessment for assignment for an order of ((priority)) selection if the department is unable to serve all eligible individuals, in accordance with WAC ((67-25-460, if the department is unable to serve all eligible individuals)) 67-25-193;

(d) An assessment through a trial work experience ((and extended evaluation, in accordance with WAC 67-25-065 and 67-25-070)) or work skills assessment, if there is a question about the applicant's ability to benefit in terms of an employment outcome from vocational rehabilitation services due to the significance of his or her disability, in accordance with WAC 67-25-140 and 67-25-220.

((5) "Blind person" means a person who:

(a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by individuals with normal vision;

(b) Has an eye condition of a progressive nature which may lead to blindness; or

(c) Is blind for purposes of the business enterprise program in accordance with RCW 74.18.200.))

(6) "Assistive technology" is defined in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002) as an assistive technology device or assistive technology service:

(a) An assistive technology device is any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase,

maintain, or improve functional capabilities of individuals with disabilities;

(b) An assistive technology service is any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

(i) The evaluation of the assistive technology needs of an individual with a disability, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the individual in the customary environment of the individual;

(ii) A service consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(iii) A service consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, replacing, or donating assistive technology devices;

(iv) Coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with education and rehabilitation plans and programs;

(v) Training or technical assistance for an individual with a disability or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual;

(vi) Training or technical assistance for professionals (including individuals providing education and rehabilitation services and entities that manufacture or sell assistive technology devices), employers, providers of employment and training services, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities; and

(vii) A service consisting of expanding the availability of access to technology, including electronic and information technology, to individuals with disabilities.

(7) "Clear and convincing evidence" means that the department has a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term "clear" means "unequivocal."

(8) "Client assistance program (CAP)" means a program, authorized under the act, which assists individuals with disabilities to receive ((vocational rehabilitation services)) those services for which they are eligible under the act by providing information and advocacy.

((7) "Competitive employment" means work:

(a) In the competitive labor market that is performed on a full time or part time basis in an integrated setting; and

(b) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(8) "Customer" means any individual with a disability:

(a) Who has been found eligible for vocational rehabilitation services from the department; and

(b) For whom services have not been denied or terminated by the department.))

(9) "Community rehabilitation program (CRP)" means an agency, organization or institution (or unit thereof) that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities as one of its major functions to enable those individuals to maximize their opportunities for employment, including career advancement. These services may include:

(a) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(b) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(c) Recreational therapy;

(d) Physical and occupational therapy;

(e) Speech, language, and hearing therapy;

(f) Psychiatric, psychological, and social services, including positive behavior management;

(g) Assessment for determining eligibility and vocational rehabilitation needs;

(h) Rehabilitation technology;

(i) Job development, placement, and retention services;

(j) Evaluation or control of specific disabilities;

(k) Orientation and mobility services for individuals who are blind;

(l) Extended employment;

(m) Psychosocial rehabilitation services;

(n) Supported employment services and extended services;

(o) Customized employment;

(p) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome;

(q) Personal assistance services; and

(r) Services similar to the services described in (a) through (q) of this subsection.

(10) "Comparable benefits" means services and benefits, including accommodations and auxiliary aids and services, that are:

(a) Provided or paid for, in whole or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits;

(b) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with WAC 67-25-230; and

(c) Commensurate to the services that the individual would otherwise receive from the designated state vocational rehabilitation agency.

For the purposes of this definition, comparable services and benefits do not include awards and scholarships based on merit.

(11) "Competitive and integrated employment" means work that:

(a) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that:

(i) Is not less than the rate required under the applicable federal, state or local minimum wage law for the place of employment;

(ii) Is not less than the customary rate paid by the employer for the same or similar work performed by other

employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(iii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(iv) Is eligible for the level of benefits provided to other employees; and

(b) Is at a location:

(i) Typically found in the community; and

(ii) Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire worksite; and

(iii) As appropriate to the work performed, the individual interacts with other persons such as participants and vendors who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

(c) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(12) Customized employment means competitive integrated employment, for an individual with a significant disability, that is:

(a) Based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability;

(b) Designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and

(c) Carried out through flexible strategies, such as:

(i) Job exploration by the individual; and

(ii) Working with an employer to facilitate placement, including:

(A) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(B) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(C) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and

(D) Providing services and supports at the job location.

(d) Customized employment may be provided as part of a job placement service in accordance with WAC 67-25-440.

(13) "Department" means the Washington state department of services for the blind.

((40)) (14) "Designated state agency (DSA)" and "designated state unit (DSU)" mean the sole state agency (DSA) and division (DSU), designated to administer or supervise the local administration of the vocational rehabilitation services

portion of the combined state plan. In Washington state, both the DSA and DSU entities for vocational rehabilitation services for individuals who are blind refer to the department of services for the blind.

(15) "Director," except when the context indicates otherwise, means the executive director of the department of services for the blind.

((44)) (16) "Eligible individual" means an applicant for vocational rehabilitation services who meets eligibility requirements in accordance with WAC ((67-25-030)) 67-25-125.

((12) "Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, supported employment (WAC 67-25-436), or any other type of employment in an integrated setting, including self-employment, telecommuting, business enterprises, or business ownership, that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. This definition also includes employment as a homemaker and employment as an unpaid family worker in accordance with procedures to be established by the department for determining the applicability of these outcomes for eligible individuals.

(13) "Employment service provider" means a program that provides directly or facilitates the provision of one or more vocational rehabilitation services, which enable individuals with disabilities to maximize opportunities for employment, including career advancement. Services include:

(a) Medical, psychiatric, psychological, social, and vocational services provided under one management;

(b) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(c) Recreational therapy;

(d) Physical and occupational therapy;

(e) Speech, language and hearing therapy;

(f) Psychiatric, psychological and social services, including positive behavior management;

(g) Assessment for determining eligibility and vocational rehabilitation needs;

(h) Rehabilitation technology;

(i) Job development, placement, and retention services;

(j) Evaluation or control of specific disabilities;

(k) Assessment and training in adaptive skills of blindness;

(l) Extended employment;

(m) Psychosocial rehabilitation services;

(n) Supported employment services and extended services;

(o) Services to family members when necessary for the vocational rehabilitation of the customer;

(p) Personal assistance services; or

(q) Services similar to those described in (a) through (p) of this subsection.

((44)) (17) "Employment outcome" means, with respect to an individual, entering, advancing in or retaining full-time or, if appropriate, part-time competitive integrated employment (including customized employment, self-employment, telecommuting, or business ownership), or supported

employment (in accordance with WAC 67-25-430), that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(18) "Extended employment" means work in a nonintegrated or sheltered setting for a public or private agency or organization that provides compensation in accordance with the Fair Labor Standards Act. The department (~~will only support extended employment as an intermediate step toward competitive employment~~) does not provide supports for extended employment goals or outcomes.

~~((15))~~ (19) "Extended services" means ongoing support services and other appropriate services that are:

(a) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in competitive and integrated employment with long-term supports;

(b) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment in a competitive and integrated workplace;

(c) Based on the needs of an eligible individual, as specified in an individualized plan for employment; and

(d) Provided by a state agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the department.

The department may not provide extended services to an individual who is not a youth with a most significant disability;

Limits for the department providing extended services to youth are described in WAC 67-25-565.

(20) "Extreme medical risk" means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(21) "Fair hearing board" means a committee, body, or group of persons established by a state prior to January 1, 1985, that:

(a) Is authorized under state law to review determinations made by personnel of the department that affect the provision of vocational rehabilitation services; and

(b) Carries out the responsibilities of the impartial hearing officer (see subsection (23) of this section).

(22) "Family member" for purposes of receiving vocational rehabilitation services in accordance with WAC 67-25-230 and 67-25-485 means an individual:

(a) Who either is a relative or guardian of an applicant or eligible individual; or lives in the same household as an applicant or eligible individual;

(b) Who has a substantial interest in the well-being of that individual; and

(c) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(23) "Impartial hearing officer" means an individual who:

(a) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(b) Is not a member of the state rehabilitation council for the department;

(c) Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;

(d) Has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation services portion of the combined state plan, and the federal and state regulations governing the provision of services;

(e) Has received training with respect to the performance of official duties; and

(f) Has no personal, professional, or financial interest that could affect the objectivity of the individual.

An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(24) "Individual who is blind" means a person who:

(a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight;

(b) Has an eye condition of a progressive nature which may lead to blindness; or

(c) Is blind for purposes of the business enterprise program in accordance with RCW 74.18.200.

(25) "Individual with a disability" for purposes of this chapter means an individual who:

(a) Has a physical or mental impairment which results in a substantial impediment to employment; and

(b) Can benefit in terms of an employment outcome from vocational rehabilitation services.

~~((16))~~ (26) "Individual with a most significant disability" means an individual who meets the department's criteria for an individual with a most significant disability:

(a) Has a severe physical or mental impairment that seriously limits three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

(27) "Individual with a significant disability" means an individual who meets the department's criteria for an individual with a significant disability:

(a) Has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

(28) "Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

~~((17))~~ (29) "Informed choice" means the process by which an individual receiving vocational rehabilitation services from the department makes decisions about rehabilitation goals and the services and service providers necessary to reach those goals. Informed choice places primary responsibility for action and decision making with the individual, with support of a vocational rehabilitation counselor. Individuals have a right to make informed choices relating to:

(a) Assessment services in accordance with WAC (~~(67-25-020, 67-25-255, and 67-25-257)~~) 67-25-130, 67-25-205, and 67-25-220;

(b) Options for developing the individualized plan for employment in accordance with WAC (~~(67-25-260)~~) 67-25-230;

(c) Vocational rehabilitation services and service providers in accordance with WAC (~~(67-25-350)~~) 67-25-265; and

(d) Employment outcome and work setting in accordance with WAC 67-25-553.

~~((18))~~ (30) "Integrated setting" means ~~((a setting typically found in the community in which an individual with a disability, including those with the most significant disabilities in accordance with WAC 67-25-060, interact with non-disabled individuals, other than service providers, to the same extent that nondisabled individuals in comparable settings interact with other persons.~~

~~(19) "Residence" or "residency" means, for purposes of this chapter, voluntarily living in the state for other than temporary reasons at the time of application.~~

~~(20) "Statewide workforce investment system" means a system described in section 111 (d)(2) of the Workforce Investment Act of 1998.~~

~~(21))~~;

(a) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals; and

(b) With respect to an employment outcome, means a setting:

(i) Typically found in the community; and

(ii) Where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire worksite; and

(iii) As appropriate to the work performed, the individual interacts with other persons such as participants and vendors who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.

(31) "Maintenance" means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(32) "Native American; American Indian tribe; American Indian; reservation."

(a) "Native American" and "American Indian" refer to an individual who is a member of an Indian tribe, a native or a descendant of a native, as such terms are defined in subsections (b) and (r) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(b) "American Indian tribe" is any federal or state American Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act) and a tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 (b)(l)));

(c) "Reservation" is a federal or state Indian reservation, a public domain Indian allotment, a former Indian reservation in Oklahoma, and land held by incorporated native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); or a defined area of land recognized by a state or the federal government where there is a concentration of tribal members and on which the tribal government is providing structured activities and services.

(33) "One-stop delivery system" or "workforce development system" is the system that brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(34) "Participant" means any individual with a disability:

(a) Who has been found eligible for vocational rehabilitation services from the department; and

(b) For whom services have not been denied or terminated by the department; or

(c) Is potentially eligible and actively engaged in the department's preemployment transition services.

(35) "Physical or mental impairment" means:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(b) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(36) "Rehabilitation engineering" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(37) "Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the bar-

riers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term "rehabilitation technology" is broadly inclusive of the terms "rehabilitation engineering," "assistive technology devices," and "assistive technology services."

(38) "Special wage certificate" means a certificate issued to an employer under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)) and 29 C.F.R. Part 525 that authorizes payment of subminimum wages, wages less than the statutory minimum wage.

Special wage certificate entity means an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate

(39) "Statewide workforce development system" means a workforce development system, as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102). The department is designated as a Title IV core partner within the workforce development system, and has shared responsibilities in combined state planning, common performance measures, and leveraging resources and services through the American job centers.

(40) "Student with a disability" means, for the vocational rehabilitation program, an individual with a disability in a secondary, postsecondary, or other recognized education program who:

(a) Is not older than twenty-one years old; and

(b) Is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or is an individual with a disability for purposes of section 504 of The Rehabilitation Act of 1973.

(41) "Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities.

~~((22))~~ (42) "Supported employment" means competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities:

(a) For whom competitive integrated employment has not historically occurred, or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(b) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after the transition from support provided by the designated state unit, in order to perform this work.

(43) "Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including

expenses for training in the use of public transportation vehicles and systems.

(44) "Vocational rehabilitation (VR) counselor" means a qualified employee of the department who has direct responsibility for providing or supervising the provision of all rehabilitation services to ~~((customers))~~ participants.

~~((23))~~ (45) "Vocational rehabilitation services" means any goods or services necessary for a ~~((customer))~~ participant to achieve an employment outcome provided in accordance with WAC ~~((67-25-350))~~ 67-25-265.

(46) "Youth with a disability," for purposes of the vocational rehabilitation program, means an individual with a disability who is not older than twenty-four years of age.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-010 Application for services. (1) Any individual who is blind, as defined in WAC ~~((67-25-005))~~ 67-25-009, may apply for vocational rehabilitation services, including any individual who has previously applied for, has previously received, or has previously been denied such services.

(2) Any individual who is blind seeking to obtain vocational rehabilitation services from the department shall submit a written letter or application for services to the department, or shall request vocational rehabilitation services ~~((on an intake form at a WorkSource center operated under the statewide workforce investment system))~~ through common intake procedures in one-stop centers under section 121 of the Workforce Innovation and Opportunity Act.

(3) The written letter or application for services shall be signed and dated by the individual requesting services or, if appropriate, by the individual's representative, and shall include:

(a) The applicant's name ~~((and address));~~

(b) The applicant's contact and address information; and

(c) The applicant's disability; ~~((and~~

~~((e)))~~

(d) The applicant's Social Security number is preferred.

(4) The applicant must be available to complete the assessment process;

(5) The department shall not provide vocational rehabilitation services to any individual who has failed to ~~((submit a signed and dated letter or application containing the above information))~~ meet the above application criteria.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-015 Intake—Initial interview. (1) An applicant for vocational rehabilitation services shall be interviewed personally by a vocational rehabilitation ~~((counselor))~~ professional or paraprofessional within ten working days upon receipt of an application by the department.

(2) The interviewer shall:

(a) Explain to the applicant the nature and operation of the vocational rehabilitation program as it relates to the applicant;

(b) Specifically inform the applicant of the right to appeal any eligibility decision made by the department on his

or her behalf through mediation and fair hearing in accordance with WAC ~~((67-25-570))~~ 67-25-600;

(c) Inform the applicant of his or her right of confidentiality of information possessed by the department and conditions for its release in accordance with WAC ~~((67-25-550))~~ 67-25-051;

(d) Inform the applicant of the vocational rehabilitation concept of informed choice, and how it relates to the individual's rehabilitation process in accordance with WAC 67-25-061;

(e) Provide to the applicant a description of client assistance program services; and

~~((e))~~ (f) Obtain information from the applicant necessary to determine his or her eligibility for vocational rehabilitation services in accordance with WAC ~~((67-25-020 and 67-25-030))~~ 67-25-125 and 67-25-130.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-020 Eligibility—Assessment for eligibility determination. (1) An assessment shall be conducted for each applicant to determine whether:

(a) The individual is blind as defined in WAC ~~((67-25-005))~~ 67-25-009, which alone or combined with other disabilities results in a substantial impediment to employment; and

(b) Vocational rehabilitation services are required for the applicant to prepare for, enter, engage in, advance in or retain an employment outcome consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

The assessment must include an appraisal of the current visual condition and prognosis of the applicant based on ophthalmological or optometric findings.

(2) If the department is operating under an order of ~~((priority))~~ selection, in accordance with WAC ~~((67-25-460))~~ 67-25-193, the assessment must also include information to be used for determination of priority categorization for services in accordance with WAC 67-25-183.

(3) The assessment shall, to the maximum extent possible, be based on a review of existing data in accordance with confidentiality requirements in WAC ~~((67-25-550))~~ 67-25-051. The assessment shall, where appropriate, include information provided by the applicant or the applicant's family, education records, information used by the Social Security Administration, determinations made by other agencies, and observations of the vocational rehabilitation counselor and other appropriate staff members.

(4) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, the assessment may include provision of vocational rehabilitation services necessary to determine whether the applicant is eligible.

Services provided for this purpose may include trial work experience ~~((or extended evaluation))~~ in accordance with WAC ~~((67-25-065 and 67-25-070))~~ 67-25-140. The department will provide assistance to the applicant, if necessary, to assure that the applicant is prepared to make an

informed choice in the selection of services needed to make an eligibility decision.

~~((5) The assessment must include an appraisal of the current visual condition and prognosis of the applicant based on ophthalmological or optometric findings.)~~

NEW SECTION

WAC 67-25-021 Vocational rehabilitation grant—Purpose. Under the U.S. Department of Education's state vocational rehabilitation services program, the Washington state department of services for the blind is provided a grant to assist in operating a statewide comprehensive, coordinated, effective, efficient, and accountable vocational rehabilitation program for individuals with visual disabilities, which is:

(1) An integral part of a statewide workforce development system; and

(2) Designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with visual and other disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in competitive integrated employment and achieve economic self-sufficiency.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-025 Eligibility (~~for services~~)—Timeline. ~~((1) The department shall determine whether an individual is eligible for vocational rehabilitation services within sixty days after receipt of an application for services, unless, exceptional and unforeseen circumstances beyond the control of the department preclude completion of the determination within sixty days, in which case, the department will notify the applicant.~~

~~((2) The applicant must agree to an extension of eligibility determination or, must agree to participate in trial work experience or extended evaluation in accordance with WAC 67-25-065 and 67-25-070. If the applicant does not agree to an extension of the eligibility determination or does not agree to participate in trial work experience or extended evaluation, the applicant will be determined ineligible for vocational rehabilitation services and the case service record will be closed in accordance with WAC 67-25-055.))~~ Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in one-stop centers under section 121 of the Workforce Innovation and Opportunity Act (WIOA), an eligibility determination must be made within sixty days, unless:

(1) Exceptional and unforeseen circumstances beyond the control of the department preclude making an eligibility determination in sixty days and the department and the individual agree to a specific extension of time; or

(2) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in a trial work assessment in accordance with WAC 67-25-140.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-030 Eligibility ~~((for services))~~—Criteria.

(1) Eligibility shall be based only upon determination by a vocational rehabilitation counselor that:

(a) The individual is blind, as defined in WAC ~~((67-25-005))~~ 67-25-009;

(b) The blindness alone or combined with other disabilities constitutes or results in a substantial impediment to competitive and integrated employment; and

(c) Vocational rehabilitation services are required for the individual to prepare for, enter, engage in, advance in, or retain ~~((an))~~ a competitive and integrated employment outcome consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Any eligible individual must intend to achieve a competitive and integrated employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act and ~~((meets the criteria in subsection (1)(a) of this section))~~ is blind (as defined in WAC 67-25-009) is presumed eligible for vocational rehabilitation services and is considered to be an individual with a significant disability as defined in WAC ~~((67-25-060))~~ 67-25-193.

If an applicant is unable to provide appropriate evidence, the department will verify the applicant's eligibility under Title II or XVI of the Social Security Act by contacting the Social Security Administration within a reasonable period of time to determine the applicant's eligibility for vocational rehabilitation services.

(3) If ~~((an individual is blind, and))~~ the individual's visual disability results in a substantial impediment to employment, it shall be presumed that the individual can benefit in terms of an employment outcome from vocational rehabilitation services, unless, the department can demonstrate by clear and convincing evidence, in accordance with WAC ~~((67-25-065))~~ 67-25-140, that the individual is incapable of benefiting in terms of ~~((an))~~ a competitive and integrated employment outcome from vocational rehabilitation services due to the significance of his or her disability.

(4) ~~((Eligibility requirements are applied without regard to the race, color, sex, religion, national origin, creed, marital status, or age of the applicant.~~

~~((5) No individual or group of individuals shall be found ineligible solely on the basis of the type of disability.~~

~~((6) No individual shall be found ineligible based on requirements for duration of residence.~~

~~((7) No individual shall be found ineligible solely on the basis of lack of U.S. citizenship. However, before the department will pay for vocational rehabilitation services, including assessment services, the applicant must provide copies of documents requested by the department that verify his or her immigration and naturalization status, and verify his or her identity. If the applicant is not a United States citizen, his or her legal work status must also be verified. The department will provide services, including assessment services, only to~~

~~applicants who meet at least one of the following conditions: United States citizenship; permanent residency status in the United States; or when a valid work permit has been issued.~~

~~((8) Eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.~~

~~((9) An individual who is blind or who has a visual disability which does not result in an impediment to employment, but who may have other disabilities which might result in impediments to employment, may be referred to other service providers or may be provided services through a cooperative plan with other service providers, such as, division of vocational rehabilitation, division of developmental disabilities, and WorkSource centers established under the statewide workforce investment system.))~~ No applicant or group of applicants is excluded or found ineligible solely on the basis of:

(a) Type of disability;

(b) Age, gender, race, color, national origin, sexual orientation, or sexual identity of the applicant;

(c) Type of expected competitive and integrated employment outcome;

(d) Source of referral for vocational rehabilitation services;

(e) Particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family;

(f) Applicants' employment history or current employment status;

(g) Applicants' educational status or current educational credential;

(h) Duration of residence for any applicant who is present in the state; and

(i) Lack of U.S. citizenship.

(5)(a) The department will provide services, including assessment services, only to applicants who present documentation demonstrating a legal eligibility to work in the United States; and

(b) Before the department will pay for vocational rehabilitation services, including assessment services, the applicant must provide copies of documents requested by the department that verify his or her immigration and naturalization status, and verify his or her identity. If the applicant is not a United States citizen, his or her legal work status must also be verified.

(6) An individual who is blind or who has a visual disability which does not result in an impediment to employment, but who may have other disabilities which might result in impediments to competitive and integrated employment, may be referred to other service providers or may be provided services through a cooperative plan with other service providers, such as the division of vocational rehabilitation, division of developmental disabilities, and the American job centers established under the statewide workforce development system.

(7) Nothing in this section is to be construed to create an entitlement to any vocational rehabilitation service.

NEW SECTION

WAC 67-25-035 Vocational rehabilitation grant—Requirements of department. To fulfill the requirements of the VR grant, the department must:

- (1) Establish a state rehabilitation council to jointly develop, agree to, and review department goals and priorities and to consult with regarding department policy and procedure;
- (2) Take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as stated in section 503 of The Rehabilitation Act of 1973;
- (3) Be primarily concerned with vocational rehabilitation;
- (4) Have a full-time director responsible for day-to-day operations;
- (5) Have ninety percent of staff employed full time on rehabilitation work;
- (6) Have sole authority and responsibility to expend funds made available in The Rehabilitation Act of 1973 (as amended), in a manner consistent with the act;
- (7) Have the responsibility for all decisions affecting:
 - (a) Eligibility for VR services, the nature and scope of available services, and the provision of these services;
 - (b) The determination to close the record of services of an individual who has achieved an employment outcome, in accordance with WAC 67-25-051;
 - (c) Policy formation and implementation;
 - (d) Allocation and expenditure of VR funds; and
 - (e) Participation as a partner in the one-stop service delivery.

The responsibility for the functions described in subsections (6) and (7) of this section may not be delegated to any other department or individual.

NEW SECTION

WAC 67-25-040 Workforce development system—Requirements of department. (1) Under WIOA, the department is identified as a required partner within the one-stop delivery system.

(2)(a) Access to the department's programs and activities is required through the state's comprehensive one-stop centers.

(b) Access to the department's programs and activities may mean:

- (i) Having a program staff physically present at the one-stop center;
- (ii) Having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through the department; or
- (iii) Making available a "direct linkage" through technology to program staff who can provide meaningful information or services:

(A) A "direct linkage" means providing direct connection at the one-stop center, within a reasonable time, by phone or through a real-time web-based communication to a

program staff member who can provide program information and/or services to the customer;

(B) A "direct linkage" cannot exclusively be providing a phone number or computer web site or providing information, pamphlets or materials.

(3) The department must use a portion of funds (to the extent consistent with WIOA and with federal cost principles in 2 C.F.R. Parts 200 and 3474, requiring, among other things, that costs are allowable, reasonable, necessary, allocable, and proportionally beneficial to the department) to:

- (a) Provide applicable career services; and
- (b) Work collaboratively with the state and local workforce development boards to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure costs (as defined in 34 C.F.R. section 361.700) through partner contributions that are based upon:
 - (i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner program based on proportionate use and relative benefit received;
 - (ii) Federal cost principles; and
 - (iii) Any local administrative cost requirements within the federal VR grant.

(4) The department must enter into an MOU with the local workforce development boards relating to the operation of the one-stop delivery system to include elements described in 34 C.F.R. 361.500 and 361.755.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-050 Eligibility—Certification and notification for decision of eligibility. (1) There shall be a certification of eligibility if the applicant meets the requirements specified in WAC ((67-25-030)) 67-25-125. The certification shall be dated and signed by a vocational rehabilitation counselor.

(2) If an applicant is offered an opportunity for trial work experience in accordance with WAC 67-25-140, there shall be a certification of eligibility for the services specified. The certification shall be dated and signed by a vocational rehabilitation counselor:

(a) The applicant shall be notified in writing, using appropriate modes of communication, and in the individual's native language if necessary, of the action taken on eligibility or ineligibility;

(b) The applicant shall be advised of the right to appeal any eligibility decision made by the department concerning the applicant including: The procedure to request mediation and fair hearing in accordance with WAC 67-25-600; and a description of client assistance program services;

(c) If an applicant is determined ineligible for vocational rehabilitation services, the notice shall clearly specify how he or she failed to meet the eligibility criteria set forth in WAC 67-25-125;

(d) If the applicant is determined eligible for vocational rehabilitation services, the notice shall clearly specify the date of eligibility certification;

(e) If the vocational rehabilitation counselor determines that an applicant is not eligible for vocational rehabilitation services, the rehabilitation counselor will provide the individ-

ual with information and referral to other agencies or organizations that may provide services to meet the individual's employment related needs.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-056 VR program exit—Ineligibility determination(~~—Review~~) or lack of participation. ~~((1) After twelve months, and annually thereafter, if requested by the individual or by the individual's representative, the department shall complete a review of an ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome, unless:~~

- ~~(a) The individual has refused the review;~~
- ~~(b) The individual is no longer present in the state; or~~
- ~~(c) His or her whereabouts are unknown.~~

~~(2) The individual, or if appropriate, the individual's representative, shall be given an opportunity to participate in any review and reconsideration of eligibility.)) (1) If the department finds that an applicant is ineligible for vocational rehabilitation services for the following reasons:~~

~~(a) Based on evidence in accordance with WAC 67-25-125;~~

~~(b) Based on clear and convincing evidence in accordance with WAC 67-25-140;~~

~~(c) Based on clear and convincing evidence and in accordance with WAC 67-25-220; or~~

~~(d) The individual makes an informed choice to not pursue a competitive and integrated employment outcome, as defined in WAC 67-25-093.~~

~~(2) The department then must:~~

~~(a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;~~

~~(b) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual of:~~

~~(i) The ineligibility determination, including the reasons for that determination;~~

~~(ii) The requirements under this section; and~~

~~(iii) The means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of department determinations in accordance with WAC 67-25-600.~~

~~(c) Provide the individual with a description of services available from a client assistance program established under 34 C.F.R. Part 370 and information on how to contact that program;~~

~~(d) Refer the individual:~~

~~(i) To other programs that are part of the workforce development service delivery system under the Workforce Innovation and Opportunity Act that can address the individual's training, employment-related and/or subsistence needs; or~~

~~(ii) To federal, state, or local programs or service providers, including, as appropriate, independent living programs and extended employment providers, best suited to meet their rehabilitation needs, if the ineligibility determination is based on a finding that the individual has chosen not to pursue, or is~~

~~incapable of achieving, a competitive and integrated employment outcome as defined in WAC 67-25-093.~~

~~(e)(i) Review annually if requested by the individual or, if appropriate, by the individual's representative, any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome due to significance of disability;~~

~~(ii) This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.~~

~~(f) The department may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the department has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.~~

AMENDATORY SECTION (Amending WSR 10-11-007, filed 5/6/10, effective 6/6/10)

WAC 67-25-060 Eligibility—Criteria for ~~((nonsignificant disability, significant disability and most significant)) categorization of significance of disability.~~ (1) An individual with a ~~((nonsignificant))~~ most significant disability is an individual who:

~~(a) ((Who has at least one functional limitation related to)) Has a severe physical or mental impairment that seriously limits three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and~~

~~(b) ((Requires one or more substantial types of services.)) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.~~

(2) An individual with a significant disability is an individual who:

~~(a) ((Who has at least two functional limitations related to)) Has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and~~

~~(b) ((Requires one or more substantial types of)) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services ~~((provided))~~ over an extended period of time.~~

~~((3) An individual with a most significant disability is an individual:~~

~~(a) Who has at least three functional limitations related to employment; and~~

~~(b) Requires two or more substantial types of services provided over an extended period of time.))~~

NEW SECTION

WAC 67-25-061 Vocational rehabilitation—Informed choice. Applicants and recipients of services (or, as appropriate, their representatives) are provided information and support services to assist the individual in exercising informed choice throughout the rehabilitation process consistent with the following provisions:

(1) Inform each applicant and recipient of services (including students and youth with disabilities), through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assist applicants and recipients of services in exercising informed choice in decisions related to the provision of assessment services;

(3) Develop and implement flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services and that afford recipients of services meaningful choices among the methods used to procure vocational rehabilitation services;

(4) Assist eligible individuals (or, as appropriate, the individuals' representatives) in acquiring information that enables them to exercise informed choice in the development of their individualized plans for employment with respect to the selection of the:

- (a) Employment outcome;
- (b) Specific vocational rehabilitation services needed to achieve the employment outcome;
- (c) Entity that will provide the services;
- (d) Employment setting and the settings in which the services will be provided;
- (e) Methods available for procuring the services; and
- (f) Ensure that the availability and scope of informed choice is consistent with the obligations of the department under this section.

(5) The department must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the:

- (a) Cost, accessibility, and duration of potential services;
- (b) Participant satisfaction with those services to the extent that information relating to participant satisfaction is available;
- (c) Qualifications of potential service providers;
- (d) Types of services offered by the potential providers; and
- (e) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(6) In providing or assisting the individual or the individual's representative in acquiring the information required, the department may use, but is not limited to, the following methods or sources of information:

- (a) Lists of services and service providers;
- (b) Periodic participant satisfaction surveys and reports;
- (c) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers;
- (d) Relevant accreditation, certification, or other information relating to the qualifications of service providers;
- (e) Opportunities for individuals to visit or experience various work and service provider settings.

(7) The department must provide information to an eligible individual or participant who is interested in becoming employed, but is uncertain of the impact work income may have on any disability benefits and entitlements being received, and/or is not aware of benefits, such as access to health care, that might be available to support employment efforts.

(a) This typically involves an analysis of an individual's current benefits, such as SSDI and SSI, the individual's financial situation, and the effect different income levels from work will have on the individual's future financial situation. This assistance is intended to provide the individual an opportunity to make an informed choice regarding the pursuit of employment;

(b) Ongoing assistance may also be provided as the individual decides on employment goals, searches for jobs, and becomes employed.

AMENDATORY SECTION (Amending WSR 08-19-068, filed 9/15/08, effective 10/16/08)

WAC 67-25-065 Eligibility—Trial work experience.

(1) Trial work experience is a process of providing assessment and related vocational rehabilitation services to an applicant with significant disabilities, for the limited purpose of collecting information necessary to make an eligibility determination, if there is concern that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the significance of his or her disability.

(2) Trial work experience allows the individual to explore his or her abilities, capabilities, and capacities to perform in a realistic work situation, while addressing identified barriers to employment through the provision of appropriate vocational rehabilitation services, including supported employment, on-the-job training, rehabilitation technology and personal assistance services in order to accommodate the rehabilitation needs of the individual during the trial work experience.

(3) Prior to any determination that an individual with a disability is unable to benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability or that the individual is ineligible for vocational rehabilitation services, the department must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations.

(a) The department must develop a written ((trial work)) plan, ((including periodic assessments, must be developed to determine)) to assess the individual's abilities, capabilities, and ((capacities;)) capacity to perform in competitive and

integrated work situations through the use of trial work experiences(-)

~~(4) If a trial work experience is provided, it must occur in a variety of work environments, include an appropriate range of tasks, must occur in the most integrated settings possible and be consistent with the individual's informed choice and rehabilitation needs), which must be provided in competitive integrated employment settings to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual.~~

(b) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic integrated work settings.

(c) Trial work experiences must be of sufficient variety and over a sufficient period of time for the department to determine that:

(i) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(ii) There is clear and convincing evidence that due to the severity of the individual's disability, the individual is incapable of benefiting from the provision of vocational rehabilitation services in terms of an employment outcome.

(d) The department must provide appropriate supports including, but not limited to, assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

NEW SECTION

WAC 67-25-083 Vocational rehabilitation—Information and referral services. The department will implement an information and referral system, using appropriate modes of communication, adequate to ensure that an individual with disabilities is provided with information and referral services that may assist the individual in securing services and benefits that he or she might qualify for and/or benefit from.

(1) Information and referral services are available to any individual who is an applicant for agency services; is potentially eligible, eligible, or ineligible for services; and/or is an active participant of agency services. This also includes any individual who is awaiting services if the department is operating under an order of selection, in accordance with WAC 67-25-193.

(2) The department will refer an individual with disabilities to other appropriate federal, state and/or community programs, including the client assistance program (CAP) and other components of the statewide workforce development system.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-255 Assessment—Comprehensive (assessment). (1) The department must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual, or if the department is operating under an order of selection, for each eligible individual to whom the department is able to provide services.

(2) The purpose of this assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment, in accordance with WAC 67-25-230.

(3) To the extent possible, current data is to be used for the comprehensive assessment, including: ((That))

(a) Data provided by the ((customer)) eligible individual and his or her family;

(b) Information available from other programs and providers such as schools and the Social Security Administration; ((and))

(c) Information utilized for the determination of eligibility ((- must be used to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment, in accordance with WAC 67-25-260. If)).

(4) When additional data is necessary, ((there must be a)) the comprehensive assessment ((of)) must consider the unique strengths, resources, priorities, concerns, abilities, capacities, interests, informed choice, and the need for supported employment services of the ((customer)) eligible individual.

(a) Any activities, if necessary, utilized to provide comprehensive assessment data must be conducted in the most integrated setting possible.

((2)) (b) The comprehensive assessment must be limited to information necessary to identify the rehabilitation needs and develop the individualized plan for employment with the eligible individual, and, as necessary, may ((- if necessary-)) include:

((a)) (i) A comprehensive analysis of pertinent medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors affecting the employment and rehabilitation needs of the individual;

((b)) (ii) An analysis of the individual's personality, interests, interpersonal skills, intelligence and related functions, educational achievements, work experience, vocational aptitudes, personal, cultural, environmental, and recreational adjustments, and employment opportunities;

((c)) (iii) Work in a real job situation or use of other available data to evaluate or develop work behaviors and capacities necessary to achieve ((an)) a competitive and integrated employment outcome. This includes an appraisal of the ((customer's)) eligible individual's pattern of work behaviors and identification of services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance;

((d)) (iv) Assessment of the need for the provision of rehabilitation technology to develop the capacities of the individual to perform in a competitive and integrated work environment, ((including in an integrated setting, to the maximum extent feasible,)) consistent with the individual's informed choice.

((3)) (5)(a) Information pertaining to conditions or circumstances, such as criminal record, INS identity and work status that restricts the type of employment the customer can legally perform must be disclosed to the department prior to development of the individualized plan for employment.

~~((4))~~ If a customer desires an employment outcome in a field that customarily requires a background check as a condition of employment, the department must obtain a criminal history background check verifying that the customer is not excluded from employment in the field or specific job prior to development of the individualized plan for employment.

~~(5))~~ (b) Background checks may be secured as a vocational rehabilitation assessment service for a participant who is seeking employment in a field that customarily requires a background check as a condition of employment. The department may obtain a federal criminal history background check verifying that the participant is not excluded from employment in the field or specific job as part of the eligible individual's informed choice in exploring or selecting an employment goal.

(6) If the department becomes aware of a condition or circumstance that may affect the customer's ability to achieve ~~((an))~~ a competitive and integrated employment outcome after the individualized plan for employment has been developed, the vocational rehabilitation counselor will conduct necessary assessment services, including ~~((trial))~~ a work ~~((experience or extended evaluation))~~ skills assessment, in accordance with WAC ~~((67-25-065 and 67-25-070))~~ 67-25-220, to determine whether the ~~((customer))~~ individual is capable of achieving the employment outcome identified in the individualized plan for employment.

~~((6))~~ (7) If ~~((a customer))~~ an eligible individual declines to authorize the release of information or to participate in vocational rehabilitation services necessary to collect pertinent information for development of an appropriate individualized plan for employment, the vocational rehabilitation counselor will close the case service record in accordance with WAC 67-25-575 and 67-25-593.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-257 Assessment—Adaptive skills of blindness. (1) As a part of the assessment to determine vocational rehabilitation service needs, there must be a determination of each individual's use of and ability to benefit from adaptive skills of blindness. Rehabilitation objectives and service needs identified with the ~~((customer))~~ eligible individual during this assessment process shall be incorporated into the individualized plan for employment.

(2) Adaptive skills of blindness assessment include, as appropriate in each case:

- (a) Communications, including braille and keyboarding;
- (b) Personal management;
- (c) Orientation and mobility;
- (d) Home management;
- (e) Activities of daily living;
- (f) Personal adjustment to blindness, and if applicable, adjustment to other disabilities;
- (g) Ability to benefit from rehabilitation technology; and
- (h) Use of residual vision and ability to benefit from low vision devices and related training.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-260 Individualized plan for employment—Timeline and criteria. (1) The individualized plan for employment is a written agreement that documents important decisions made between the ~~((customer))~~ participant and a vocational rehabilitation counselor concerning ~~((the customer's employment outcome including,))~~ activities towards achievement of the participant's competitive and integrated employment goal including responsibilities agreed upon by the department and the ~~((customer))~~ participant, and ~~((the))~~ vocational rehabilitation services to be provided.

(2) The individualized plan for employment is developed and implemented in a timely manner for each eligible individual, and no later than ninety days after eligibility except:

(a) When the department is operating under an order of selection, in accordance with WAC 67-25-193; or

(b) The eligible individual and VR counselor agree to a delayed plan completion, with specific expected date of completion documented.

(3) The ~~((customer))~~ participant must be actively involved in developing the individualized plan for employment including making meaningful and informed choices about the selection of the employment outcome, ~~((intermediate))~~ objectives, ~~((the))~~ vocational rehabilitation services ~~((provided))~~, service providers, ~~((settings,))~~ and methods of procuring services.

~~((3))~~ (4) The competitive and integrated employment outcome the ~~((customer))~~ participant chooses must be consistent with the information and results of the assessment of the individual's vocational rehabilitation needs.

~~((4))~~ (5) The department supports ~~((customers))~~ participants to achieve ~~((an))~~ a competitive and integrated employment outcome as defined in WAC ~~((67-25-005))~~ 67-25-009. If a ~~((customer))~~ participant chooses another type of employment outcome, the department will, to the extent possible, refer the ~~((customer))~~ participant to other programs or organizations that may offer the type of employment that the ~~((customer))~~ participant desires.

~~((5))~~ (6) The individualized plan for employment must be agreed upon and signed by the ~~((customer))~~ participant, or as appropriate, the ~~((individual's))~~ participant's representative, and a vocational rehabilitation counselor.

~~((6))~~ (7) The individualized plan for employment shall be designed to achieve the competitive and integrated employment outcome of the ~~((customer))~~ participant consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, and interests ~~((of the individual. To the extent possible, consistent with the informed choice of the individual, the plan shall include placement in an integrated setting))~~ and informed choice of the participant.

~~((7))~~ (8) The plan shall include:

(a) The ~~((individual's))~~ participant's long-term competitive and integrated employment outcome, based on the assessment for determining vocational rehabilitation needs and the career interests of the individual in accordance with WAC 67-25-205 and 67-25-210;

(b) Specific and measurable ~~((intermediate))~~ rehabilitation objectives to achieve the competitive and integrated

employment outcome, based on the assessment for determining vocational rehabilitation needs;

(c) ~~((Specific))~~ Vocational rehabilitation services to be provided to achieve the ~~((intermediate))~~ rehabilitation objectives;

(d) Projected initiation dates and the anticipated duration of each service;

(e) Objective criteria, and an evaluation procedure and schedule to determine whether goals and objectives are being achieved;

(f) The views of the ~~((individual, in the words of the individual,))~~ participant in their own words or, as appropriate, in the words of the individual's representative, describing how he or she was informed about and involved in choosing among alternative goals, objectives, services, providers, and methods used to procure or provide services ~~((, including alternatives in integrated settings))~~;

(g) How, to the maximum extent possible, information will be provided to the ~~((individual))~~ participant, or if appropriate, to the ~~((individual's))~~ participant's representative, in his or her native language if necessary, and using appropriate modes of communication;

(h) Terms and conditions for the ongoing provision of vocational rehabilitation services, including:

(i) Responsibilities the ~~((customer))~~ participant has agreed to, including steps the ~~((customer))~~ participant will take to achieve the competitive and integrated employment outcome, and services the ~~((customer))~~ participant agrees to apply for and use that are available at no cost from another program;

(ii) ~~((The extent to which goods and services shall be provided in integrated settings, consistent with the informed choices of the individual;))~~

~~((iii))~~ Ongoing exploration for comparable services and benefits, in accordance with WAC ((67-25-360, are)) 67-25-283, that may be available to the ((individual)) participant under any other program;

~~((iv))~~ The ((iii)) Participant's active involvement through informed choice in selection of the entity or entities that will provide services and the process ((and setting to be used)) to provide or procure services;

~~((v))~~ Assessment of the need for post-employment services, in accordance with WAC 67-25-444, prior to closing the case service record, of a customer who has achieved an employment outcome and, if appropriate, a statement of how post-employment services are to be arranged or provided using comparable services and benefits, in accordance with WAC 67-25-360;

~~((vi))~~ (iv) Information regarding the right to appeal any decision made by the department on behalf of the ((individual)) participant including the procedure for mediation, fair hearing, and judicial review, in accordance with WAC ((67-25-570)) 67-25-600;

~~((vii))~~ (v) A description of client assistance program services; and

~~((viii))~~ (vi) The basis on which the ((individual)) participant is determined to have achieved ((an)) a competitive and integrated employment outcome.

~~((8))~~ (9) An individualized plan for employment that includes a supported employment outcome, in accordance with WAC ((67-25-436)) 67-25-430 must also document:

(a) The supported employment services to be provided by the department;

(b) Extended services or natural supports that are likely to be needed;

(c) The source of extended services or, to the extent that it is not possible to identify the source of extended services when the plan is developed, a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(d) A goal for the number of hours per week the ~~((customer))~~ participant is expected to work and a plan to monitor the ~~((customer's))~~ participant's progress toward meeting that expectation;

(e) A description of how the services on the individualized plan for employment are to be coordinated with other individualized plans established under other federal or state services;

(f) If job skills training is provided, the individualized plan for employment must reflect that the training is provided ~~((on-site))~~ on the job site; and

(g) Placement in ~~((an))~~ a competitive and integrated setting for the maximum number of hours possible based on the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the ~~((customer))~~ participant.

~~((9))~~ (10) Transition ((students)) youth who are determined eligible for vocational rehabilitation services must have an individualized plan for employment ((prior to leaving school)) developed within the same timelines and criteria as any eligible individual. An individualized plan for employment for a transition ((student)) youth who is receiving special education or accommodation services should be coordinated, to the extent possible, with the participant's school individualized education plan ((of the individual)) or 504 Accommodation Plan in terms of identified goals, objectives, and services.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-270 Individualized plan for employment—Participation of the ((customer)) eligible individual. (1) ~~((A customer))~~ An eligible individual or, as appropriate, the individual's representative may develop all or part of the individualized plan for employment:

(a) Independently, without any assistance from the department or another entity;

(b) With assistance from a vocational rehabilitation counselor employed by the department;

(c) With assistance from a vocational rehabilitation counselor who is not employed by the department but who meets the minimum qualifications for a vocational rehabilitation counselor as established by the department; and/or

(d) Other resources such as a representative, family member, advocate, or other individual.

(2) The department shall provide, as appropriate to each ~~((customer))~~ eligible individual, information to assist the

individual or the individual's representative in developing the individualized plan for employment, including:

(a) Information describing the full range of components that must be included in an individualized plan for employment;

(b) Information on assistance available for completing required forms; and

(c) Additional information that the ~~((customer))~~ eligible individual requests or the department determines to be necessary for development of the individualized plan for employment.

(3)(a) The department will provide assistance to ~~((customers))~~ individuals who choose to develop their individualized plan for employment with someone other than a department vocational rehabilitation counselor, and will identify individuals, to the extent possible, who may be of help in that process.

(b) However, the department will not pay fees or other expenses associated with obtaining assistance from such individuals.

(4) Substantive changes to the individualized plan for employment must be jointly made and agreed upon by the ~~((customer))~~ participant and the department vocational rehabilitation counselor.

(5) A copy of the individualized plan for employment and copies of any revisions and amendments shall be provided, using appropriate modes of communication, to the ~~((customer))~~ participant or, as appropriate, to the individual's representative.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-275 Individualized plan for employment—Amendments and annual reviews. (1) The individualized plan for employment shall be reviewed as necessary but at least annually. The ~~((customer))~~ participant, or if appropriate, the ~~((individual's))~~ participant's representative, shall be given an opportunity to review the plan and jointly redevelop and agree to its terms.

(2) Services shall be modified as needed and incorporated into the plan. The addition of services as agreed to by participant and VR counselor does not require participant signature.

(3) If it is determined that the employment outcome of the ~~((customer))~~ participant will be changed, or that services will be deleted from the plan, the new plan shall not take effect until agreed upon and signed by the ~~((customer))~~ participant, or if appropriate, the individual's representative, and the vocational rehabilitation counselor.

(4) If a ~~((customer's))~~ participant's vision is restored so that he or she is not blind, as defined in WAC ~~((67-25-005))~~ 67-25-009, further services shall be limited to those identified in an assessment of vocational rehabilitation service needs in accordance with WAC ~~((67-25-255))~~ 67-25-205.

(5) If the ~~((customer))~~ participant has other disabilities, which result in an impediment to employment, the individual will be referred to the appropriate ~~((organization))~~ organization(s) for assistance.

~~((5))~~ (6) The individualized plan for employment review may be conducted with a qualified vocational rehabilitation counselor who is not employed by the department.

(a) However, in such cases, the department vocational rehabilitation counselor shall have final signature authority on the review and any changes to the plan.

(b) The department will not pay fees or other expenses associated with obtaining assistance from such individuals.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-284 ~~((Individualized plan for employment—Termination for reasons other than ineligibility.))~~ VR program exit—Other reasons. (1) Vocational rehabilitation services provided under an individualized plan for employment shall be terminated prior to completion if a ~~((customer))~~ participant:

(a) Has died;

(b) Cannot be located by the department after reasonable efforts to do so;

(c) Has been institutionalized under circumstances which preclude provision of services for a substantial or indefinite period of time;

(d) Has moved to another jurisdiction and the department is unable to continue provision of services;

(e) Declines to accept or utilize vocational rehabilitation services after reasonable efforts have been made to encourage participation.

(2) A decision to terminate services for any reason described in subsection (1) of this section does not require a review and reconsideration after twelve months pursuant to WAC ~~((67-25-056))~~ 67-25-575.

NEW SECTION

WAC 67-25-290 Vocational rehabilitation services—Preemployment transition for students. (1) The department, in collaboration with the local educational agencies involved, must provide, or arrange for the provision of, preemployment transition services for all students with visual disabilities not older than twenty-one years of age who are in need of such services, without regard to the type of visual disability. Reserved and available funds may be used for the required, authorized, and preemployment transition coordination activities.

(2) Preemployment transition services must be made available statewide to all students with visual disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.

(3) The department must provide the following required preemployment transition service activities:

(a) Job exploration counseling;

(b) Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible;

(c) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

(d) Workplace readiness training to develop social skills and independent living; and

(e) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

(4) Each local office of the department must carry out preemployment transition coordination responsibilities consisting of:

(a) Attending individualized education program meetings for students with disabilities, when invited;

(b) Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;

(c) Working with schools, including those carrying out activities under section 614(d) of the IDEA, to coordinate and ensure the provision of preemployment transition services under this section;

(d) When invited, attending person-centered planning meetings for individuals receiving services under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

(5) Funds available and remaining after the provision of the required activities described above may be used to improve the transition of students with visual disabilities from school to postsecondary education or an employment outcome by the following authorized activities:

(a) Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;

(b) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;

(c) Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;

(d) Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;

(e) Coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

(f) Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of this section;

(g) Developing model transition demonstration projects;

(h) Establishing or supporting multistate or regional partnerships involving states, local educational agencies, designated state units, developmental disability agencies, private businesses, or other participants to achieve the goals of this section; and

(i) Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

NEW SECTION

WAC 67-25-335 Vocational rehabilitation services—Other training. The department may support miscellaneous training programs that are necessary to the achievement of the participant's employment goal, such as:

(1) Basic academic remedial course work and literacy training that are needed to function on the job in the integrated and competitive labor market, including GED or secondary school training leading to a diploma.

(2) Training and course work to support small business ownership or preparation for the Randolph-Sheppard Act (20 U.S.C. Sec 107) opportunities.

(3) Courses taken at four-year, junior or community colleges not leading to a certificate or diploma that are needed to function on the job in the integrated and competitive labor market.

(4) A training program designed to meet the special requirements of an employer who has entered into an agreement with a service delivery area to hire individuals who are trained to the employer's specifications. The training may occur at the employer's site or provided by a training vendor able to meet the employer's requirements. Such training usually requires a commitment from the employer to hire a specified number of trainees who satisfactorily complete the training.

(5) A registered apprenticeship program.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-350 Vocational rehabilitation(~~(—)~~services (~~(provided)~~)—Nature and scope. (~~Based on the vocational rehabilitation needs of each customer, the department will make the following vocational rehabilitation services available to assist the customer~~) (1) The provision of the department's VR services is based on the rehabilitation needs of each individual as identified in that participant's individualized plan for employment and is consistent with the participant's informed choice.

(2) The department's policy on VR service provision does not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve a competitive and integrated employment outcome.

(3) The department's policy on VR service provision has been developed in accordance with the following provisions:

(a)(i) The department has established a preference for in-state services, provided that the preference does not effectively deny an individual a necessary service.

(ii) If the individual chooses an out-of-state service at a higher cost than an in-state service, if either service would meet the individual's rehabilitation needs, the department is not responsible for those costs in excess of the cost of the in-state service.

(b) The department maintains a fee schedule designed to ensure a reasonable cost to the program for each service, provided that the schedule established is:

(i) Not so low as to effectively deny an individual a necessary service; and

(ii) Not absolute and will permit exceptions so that individual needs can be addressed.

(c) The department may establish reasonable time period limits for the provision of services, provided that the time limits are:

(i) Not so short as to effectively deny an individual a necessary service; and

(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(d) While an option through the federal regulations, the department will not apply a financial needs test, or require the financial participation of the individual, in order to receive services.

(e) The department must establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

(f) Substantive changes to department policy that directly impact the nature, scope, or delivery of the services provided to individuals with disabilities require a public participation process. The public input must be gathered:

(i) In an in-person meeting format (which might include face-to-face, phone, and/or remote access video or chat);

(ii) Be separate and distinct from the state rehabilitation council public input process.

(4) Preemployment transition services are made available statewide to all students with visual and other disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services, in accordance with WAC 67-25-290.

(5) VR services are made available as appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's individualized plan for employment. The following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, advancing in or regaining ((an)) a competitive and integrated employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

~~((H))~~ (a) Assessment for determining eligibility ~~((in accordance with WAC 67-25-020, and order of))~~ and/or priority for services in accordance with WAC ~~((67-25-460))~~ 67-25-130 and 67-25-183;

~~((2))~~ (b) Assessment for determining vocational rehabilitation needs in accordance with WAC ~~((67-25-255 and 67-25-257))~~ 67-25-205 and 67-25-210;

~~((3))~~ (c) Vocational rehabilitation counseling and guidance including information and support services to assist an individual in exercising informed choice in accordance with WAC ~~((67-25-380))~~ 67-25-273;

~~((4))~~ (d) Referral and ~~((related))~~ other services ~~((to help the))~~ necessary to assist applicants and eligible individuals to secure needed services from other agencies ~~((including other partners in the statewide workforce investment system and referral to the client assistance program;~~

~~((5))~~ or client assistance programs, including other components of the statewide workforce development system, in accordance with WAC 67-25-073.

(e) Physical and mental restoration services in accordance with WAC ~~((67-25-384;~~

~~((6))~~ 67-25-310, to the extent that financial support is not readily available from a source other than the department (such as through health insurance or a comparable service or benefit as defined in WAC 67-25-283).

~~((f))~~ (i) Vocational and other training ~~((in accordance with WAC 67-25-388, 67-25-390, 67-25-394, 67-25-396, and 67-25-398, subject to limitations in WAC 67-25-360;~~

~~((7))~~ services, including personal and vocational adjustment training, advanced training in, but not limited to, a field of science, technology, engineering, mathematics (including computer science, medicine, law, or business); books, tools, and other training materials in accordance with WAC 67-25-320, 67-25-330, 67-25-340, 67-25-265, and 67-25-365.

(ii) No training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other postsecondary education institution) may be paid for with funds under this part unless maximum efforts have been made by the department and the individual to secure financial and grant assistance in whole or in part from other sources to pay for that training.

(g) Maintenance ~~((related))~~ in connection to the provision of vocational rehabilitation services in accordance with WAC ~~((67-25-400))~~ 67-25-370;

~~((8))~~ (h) Transportation ~~((related))~~ in connection to the provision of a vocational rehabilitation service(s) in accordance with WAC ~~((67-25-404))~~ 67-25-383;

~~((9))~~ (i) Vocational rehabilitation services to family members ~~((in accordance with WAC 67-25-408;~~

~~((10))~~ as defined in WAC 67-25-485, if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(j) Interpreter and translation services ~~((in accordance with WAC 67-25-412;~~

~~((11))~~ Reader services in accordance with WAC ~~67-25-408;~~

~~((12))~~ Assessment and training in adaptive skills of blindness in accordance with WAC 67-25-257 and 67-25-398;

~~((13))~~, including language translation services, sign language and oral interpreter services for individuals who are deaf or hard of hearing, and tactile interpreting services for individuals who are deaf-blind, provided by qualified personnel in accordance with WAC 67-25-393.

(k) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind in accordance with WAC 67-25-365 and 67-25-403.

(l) Job-related services, including job search and placement assistance ~~((, and))~~ job retention services ~~((in accordance with WAC 67-25-440;~~

~~((14))~~, follow-up services, and follow-along services in accordance with WAC 67-25-340, 67-25-355, and 67-25-440.

(m) Supported employment services in accordance with WAC ~~((67-25-436))~~ 67-25-430;

~~((15))~~ (n) Personal assistance services ~~((including training in managing, supervising, and directing these services))~~ in accordance with WAC ~~((67-25-418))~~ 67-25-410;

~~((16))~~ (o) Post-employment services in accordance with WAC ~~((67-25-444))~~ 67-25-450;

~~((17))~~ (p) Occupational licenses, tools, equipment, initial stocks, and supplies ((in accordance with WAC 67-25-448)), and technical assistance and other consultation services to participants who are pursuing self-employment or establishing a small business operation as an employment outcome, in accordance with WAC 67-25-465;

~~((18))~~ (q) Rehabilitation technology ((and telecommunications)) services in accordance with WAC ((67-25-448)) 67-25-425;

~~((19))~~ (r) Preemployment transition services that provide careers and work preparation exploration and experiences for students with disabilities, in accordance with WAC 67-25-290.

~~((s))~~ Transition services for ((students in accordance with WAC 67-25-399);

~~(20) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self employment or telecommuting or establishing a small business operation as an employment outcome; and~~

~~(21))~~ youth with disabilities to facilitate the transition from school to postsecondary life, such as entry into a post-secondary training program and/or achievement of an employment outcome in competitive integrated employment, in accordance with WAC 67-25-305.

~~(t) Customized employment in accordance with WAC 67-25-440.~~

~~(u) Other goods and services determined necessary for the ((customer)) individual with a disability to achieve ((an)) a competitive and integrated employment outcome in accordance with WAC ((67-25-452)) 67-25-475.~~

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-360 Vocational rehabilitation services—Comparable services ((and benefits)). (1) Consideration of comparable services and benefits is required by ~~((Section 101(a)(8) of))~~ the Rehabilitation Act (as amended). Therefore, this section prevails over all other sections describing conditions under which vocational rehabilitation services shall be provided.

(2) Comparable services and benefits include any financial or other resource for which a ~~((customer))~~ participant is legally qualified, or entitled, or meets the criteria for obtaining without undue contingencies. The resource must be an organized, ongoing form of service provision or financial assistance, whether public or private. It must be free or may require a deductible, co-insurance feature, token payment or personal claim.

(3) ~~((Customers))~~ Participants are required to apply for and accept comparable services and benefits which they are entitled to receive before vocational rehabilitation funds can be expended, except as provided in subsections (5) and (6) of this section.

(4) The vocational rehabilitation counselor has an obligation to inform ~~((customers))~~ participants of known sources

for comparable services and benefits and shall assist with application for these services when necessary.

(5) The following services are provided without consideration of comparable services and benefits:

(a) Assessment in accordance with WAC ~~((67-25-020, 67-25-055 and 67-25-057))~~ 67-25-130, 67-25-160, 67-25-183, 67-25-205, 67-25-210, and 67-25-220;

(b) Counseling and guidance in accordance with WAC ~~((67-25-380))~~ 67-25-273 including information and support services to assist an individual in exercising informed choice in accordance with WAC 67-25-073;

(c) Referral and other services to secure needed services from other agencies, including other components of the workforce development system, if those services are not available under this subsection, in accordance with WAC 67-25-061;

(d) ~~((Training services including work skills building and work readiness training, books, and other training materials in accordance with WAC 67-25-388, 67-25-394, 67-25-396, 67-25-398;))~~ Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services in accordance with WAC 67-25-340, 67-25-355, and 67-25-440;

~~(e) ((Placement services in accordance with WAC 67-25-440;~~

~~(f))~~ Rehabilitation technology services in accordance with WAC ((67-25-448)) 67-25-425;

~~((g))~~ (f) Services listed in (a) through ((f)) (e) of this subsection as post-employment services in accordance with WAC ((67-25-444)) 67-25-450.

(6) Determination of comparable services and benefits shall not be required if:

(a) Utilization of such a service would delay provision of vocational rehabilitation services to an individual determined to be at extreme medical risk, based on medical evidence provided by a qualified medical professional, indicating a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously; or

(b) An immediate job placement would be lost due to a delay resulting from utilization of comparable services and benefits.

(7) The following services may be provided only after consideration of comparable services and benefits:

(a) Physical and mental restoration services in accordance with WAC ~~((67-25-384))~~ 67-25-310;

(b) Maintenance in accordance with WAC ~~((67-25-400))~~ 67-25-370;

(c) Transportation in accordance with WAC ~~((67-25-404))~~ 67-25-383;

(d) Services to family members in accordance with WAC ~~((67-25-408))~~ 67-25-485;

(e) Interpreter and translation services in accordance with WAC ~~((67-25-412))~~ 67-25-393;

(f) Reader services in accordance with WAC ~~((67-25-416))~~ 67-25-403;

(g) Training at institutions of higher education in accordance with WAC ~~((67-25-388 and 67-25-390))~~ 67-25-320 and 67-25-330;

(h) Supported employment services in accordance with WAC ((67-25-436)) 67-25-430;

(i) Personal assistance services in accordance with WAC ((67-25-418)) 67-25-410;

(j) Post-employment services, in accordance with WAC ((67-25-444)) 67-25-450, except as specified in subsection (5) of this section;

(k) Occupational licenses, tools, equipment, initial stocks and supplies in accordance with WAC ((67-25-448)) 67-25-465;

(l) Transition services for ~~((students))~~ youth in accordance with WAC ((67-25-299)) 67-25-305;

(m) Other goods and services not specified in this section.

(8) Consideration of comparable services and benefits shall be documented in the customer's case services record and shall include sources of assistance considered, whether the customer applied, acceptable reasons for failure to apply, outcome of application, and basis for the decision to expend vocational rehabilitation funds for services described in subsection (7) of this section.

(9) Vocational rehabilitation funds shall not be expended to purchase services for a participant when another agency has primary responsibility for providing the needed service.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-380 Vocational rehabilitation services—Counseling and guidance. (1) Counseling and guidance services, based on needs of the individual, shall be available throughout all phases of the rehabilitation process to assist the participant with:

(a) Adjustment to blindness and other disabilities; understanding the importance of developing and using adaptive skills of blindness; and, identifying strategies to overcome negative social attitudes regarding disability;

(b) Identifying ~~((his or her))~~ the participant's unique strengths, resources, priorities, concerns, abilities, and capabilities related to planning for and achieving ~~((an))~~ a competitive and integrated employment outcome;

(c) Identifying and overcoming potential barriers to achieving ~~((an))~~ a competitive and integrated employment outcome, including disability-related, personal, and social factors;

(d) Selecting ~~((an))~~ a competitive and integrated employment outcome consistent with ~~((his or her))~~ the participant's abilities, capabilities, and interests;

(e) Obtaining and utilizing resource information to make meaningful and informed choices regarding selection of vocational rehabilitation goals, objectives, services, and providers;

(f) Overcoming potential barriers and achieving ~~((an))~~ a competitive and integrated employment outcome through development of skills such as: Study and work habits; grooming; management of finances; preparation for job interviews and tests; self-advocacy; and effective interpersonal relationships.

(2) Counseling and guidance services may also be provided to:

(a) Assist family members to effectively participate in the rehabilitation process;

(b) Assist prospective employers to develop positive attitudes regarding hiring and accommodating individuals who are blind.

(3) Counseling and guidance shall be provided without consideration of comparable services and benefits in accordance with WAC ((67-25-360)) 67-25-283.

AMENDATORY SECTION (Amending WSR 08-19-068, filed 9/15/08, effective 10/16/08)

WAC 67-25-384 Vocational rehabilitation services—Physical and mental restoration ((services)). (1) Physical and mental restoration services shall be provided to a ~~((customer))~~ participant under an individualized plan for employment when the vocational rehabilitation counselor determines that such services are likely, within a reasonable period of time, to substantially correct or modify a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to competitive and integrated employment for the ~~((customer))~~ participant.

(2) All authorized physical and mental restoration services shall be provided by qualified personnel who meet state licensing requirements.

(3) When receiving physical and mental restoration services, the ~~((customer))~~ participant may choose the physician or other health professional and appropriate facilities. Service providers and facilities should, to the maximum extent appropriate, be selected from those who will accept reimbursement in accordance with the *Washington State Department of Labor and Industries Schedule of Maximum Allowances and Program Descriptions*.

(4) Physical and mental restoration services may be provided to an applicant or customer during trial work experience or ~~((extended evaluation))~~ work skills assessment, in accordance with WAC ((67-25-065 and 67-25-070)) 67-25-140 and 67-25-220, if it is necessary to stabilize or halt progression of a chronic illness for purposes of determining eligibility or continued eligibility.

(5) Physical and mental restoration services include but are not limited to:

(a) Surgical and therapeutic treatment;

(b) Diagnosis and treatment for mental or emotional disorders;

(c) Dental treatment;

(d) Nursing services;

(e) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(f) Convalescent or nursing home care;

(g) Drugs and supplies;

(h) Prosthetic, orthopedic or other assistive devices;

(i) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by qualified medical practitioners;

- (j) Podiatry;
- (k) Physical therapy;
- (l) Occupational therapy;
- (m) Speech or hearing therapy;
- (n) Mental health services;

(o) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment (34 C.F.R. 365.1 (c)(39));

(p) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies;

(q) Other medical or medically related rehabilitation services; and

(r) Medical care for acute conditions arising during rehabilitation and constituting a barrier to the achievement of an employment outcome.

(6) Physical and mental restoration services shall be provided only after consideration of comparable services and benefits except as specified in WAC ((67-25-360)) 67-25-283.

AMENDATORY SECTION (Amending WSR 08-19-068, filed 9/15/08, effective 10/16/08)

WAC 67-25-388 Vocational rehabilitation services—General training provisions. (1) The individualized plan for employment may include any organized form of instruction providing the knowledge and skills necessary for a customer to perform ~~((competitively in an occupation and achieve an))~~ to market expectations in an occupation or career field and achieve a competitive and integrated employment outcome. Knowledge and skills may be acquired through training in an institution, on the job, by correspondence or online technology, by tutors, or through a combination of these methods. Training may be given for any occupation, except as prohibited in subsection (2) of this section.

(2) Article I, Subsection 11 of the Washington state Constitution forbids the use of public funds to support an individual in education or training for an employment goal that is religious in nature.

(3) Programs or schools used to provide training shall be limited to those which are accredited, licensed, or approved either by a legal authority, or are recognized as adequate by the professional or trade group with which they are associated.

(4) The department may provide tuition, fees, books, tools and other training materials and shall periodically establish guidelines for determining the provision of these services.

(5) Training services shall be provided only after consideration of comparable services and benefits as specified in WAC 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-390 Vocational rehabilitation services—Post-secondary training(~~—Institutions of higher education~~)). (1) Training at a university, college, community col-

lege, vocational school, technical institute, ~~((or hospital))~~ school of nursing or other accredited training program may be provided if necessary to achieve the competitive and integrated employment outcome agreed upon by the ~~((customer))~~ participant and vocational rehabilitation counselor except as prohibited in accordance with WAC ~~((67-25-388))~~ 67-25-320.

(2) No training or training services in institutions of higher education shall be paid for with vocational rehabilitation funds unless the ~~((customer))~~ participant has applied for financial aid and other grant assistance from other sources to pay for the training in whole or in part. If the ~~((customer))~~ participant has applied for financial aid and is waiting for the results, and denial of training funds by the department would result in interruption or delay of the progress of the ~~((customer))~~ participant toward achieving his or her employment outcome, the vocational rehabilitation counselor may pay training costs on an interim basis until the results of the financial aid application is known.

(3) A ~~((customer))~~ participant may attend private or out-of-state institutions of higher education in preparation for an employment outcome; however, financial assistance shall be limited to the tuition amount at the University of Washington or the actual cost, whichever is less. Exceptions may be made when required training is not available in the state, or if other significant factors preclude the ~~((customer))~~ participant from attending an available training program at a public institution of higher education in the state.

(4) The department may provide financial assistance to a ~~((customer))~~ participant wishing to obtain a postgraduate degree when the training is necessary to achieve the individual's employment outcome. ~~((However, financial assistance shall not be provided to a customer pursuing a graduate program for the sole purpose of achieving upward mobility unless it can be determined that the customer is not currently employed in work that is consistent with his or her unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and the individual requires vocational rehabilitation services to prepare for, secure, retain, or regain employment of this nature.))~~

(5) A ~~((customer))~~ participant receiving training at an institution of ~~((higher))~~ post-secondary education must meet established scholastic standards required by the program. If the ~~((customer's))~~ participant's grades fall below minimum standards, it shall be necessary, through assessment, counseling, and planning with the ~~((customer))~~ participant, to revise the individualized plan for employment including the possible selection of a new employment outcome.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-394 Vocational rehabilitation services—~~((Training—))~~On-the-job training. (1) On-the-job training (OJT) is a training service ~~((an employer provides to a customer))~~ provided in collaboration among the department, employer and participant, after the individual is placed in a job, to assist the ~~((customer))~~ participant to learn the skills needed to perform the work. On-the-job training may be provided as a vocational rehabilitation service to achieve the

~~((customer's))~~ participant's competitive and integrated employment outcome.

(2) OJT services shall be provided as a program of organized training resulting in the competitive and integrated employment of the ((customer)) participant, giving the individual the opportunity to learn an occupation under actual conditions of commercial, industrial, or other on-the-job employment. The department will pay for ~~((the))~~ training costs, and the employer is responsible for costs related to employment.

(3) OJT services shall be provided to a ~~((customer))~~ participant only when the vocational rehabilitation counselor establishes that the following conditions have been met:

(a) The training program has been prepared in advance and outlined in detail;

(b) The ~~((customer's))~~ participant's training will follow a definite schedule of specified operations, instructions, and practices which will insure well-rounded preparation for the ~~((customer's))~~ participant's selected occupation;

(c) A mutual understanding has been reached between the ~~((trainee—customer, the trainer—employment training))~~ trainee/participant, the employer/training provider, and the vocational rehabilitation counselor regarding the ((customer's)) participant's employment training plan including: Length of the training period; financial arrangements; and operations and skills to be learned;

(d) The employer agrees to closely supervise the ~~((customer's))~~ participant's work and shall submit regular reports on the ~~((customer's))~~ participant's progress and performance to the vocational rehabilitation counselor;

(e) The training program meets any requirements for licensing in the trade or occupation in which the ~~((customer))~~ participant is to be employed;

(f) The employment training program for the ~~((customer))~~ participant is acceptable to other employees of the training provider.

(4) A business or industrial establishment utilized by the department to provide OJT services shall:

(a) Have personnel qualified with appropriate knowledge, skills, and ~~((personality))~~ aptitude to provide instruction;

(b) Have sufficiently diversified operations and adequate, suitable materials and equipment to ~~((insure a))~~ ensure the trainee thorough preparations and training within the scope and limits of his or her occupational objective;

(c) Ensure that training vocational rehabilitation ~~((customers))~~ participants is only incidental to the business activity of the facility;

(d) Ensure that the training program shall be consistent with the informed choice of the ~~((customer))~~ participant, and designed to assist him or her to achieve ~~((an))~~ a competitive and integrated employment outcome ((in an integrated setting)).

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-396 Vocational rehabilitation services—~~((Training—))~~**Work readiness skills ((building)).** (1) Work readiness skill building and related employment train-

ing services may be provided to a ~~((customer through an employment service provider))~~ participant. This ~~((option))~~ service may be appropriate if a ~~((customer is not ready for, or does not wish to receive training in an integrated setting))~~ participant has gaps in readiness for job-finding skills or workplace expectations within a competitive and integrated work environment.

(2) Work readiness skill building training may be provided to assist the ~~((customer))~~ participant with foundational work skills, such as:

(a) Understanding the meaning, value, and demands of work;

(b) Gaining skills in understanding and capability around the cultural expectations of the workplace;

(c) Developing appropriate attitudes, habits, and work behaviors~~((; and~~

~~((e))),~~ and organizational tools and systems;

(d) job finding skills;

(e) Developing functional capacities necessary to achieve an optimum employment outcome~~((;~~

~~((3) Prior to provision of work skill building, there shall be an assessment of the individual's patterns of work behavior, and the services needed for him or her to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, social skills, and behavior patterns suitable for successful job performance.~~

~~((4) Work skill building shall meet the following criteria:~~

~~((a) The training program shall be outlined in detail and agreed upon by the customer, or if appropriate, his or her representative, the vocational rehabilitation counselor, and the employment service provider, and shall include: Anticipated length of training; methods to be used; and objectives to be achieved.~~

~~((b) The training program shall, consistent with the informed choice of the customer, be designed to assist him or her to achieve an employment outcome in an integrated setting.~~

~~((c) The employment service provider agrees to closely supervise the customer's training and submit regular reports on the customer's progress and performance to the vocational rehabilitation counselor.~~

~~((d) The employment service provider is certified by the department of social and health services division of vocational rehabilitation to provide work skill building training); and~~

~~((f) Gaining effective workplace self-advocacy skills.~~

(3) Work readiness skills may be provided as part of job placement services.

(4) A paid or unpaid internship that allows a student or participant direct career experience may also be provided as a work readiness skills service. An internship is distinguished from an OJT in that there is no formal expectation that the employer will hire the participant after the period of work experience and training.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-398 Vocational rehabilitation services—~~((Training—))~~**Adaptive skills of blindness.** (1) Adaptive

skills of blindness are those skills necessary for individuals who are blind to function independently, distinguished from the vocational skills necessary to perform a specific occupation. Adaptive skills include:

- (a) Communications, including Braille and keyboarding;
- (b) Personal management;
- (c) Orientation and mobility;
- (d) Adjustment to blindness;
- (e) Home management;
- (f) Activities of daily living;
- (g) Use of rehabilitation technology; and
- (h) Use of residual vision and related devices.

(2) Training in adaptive skills of blindness shall be provided to a ~~((customer))~~ participant in accordance with standards established by the department for instruction of the specific adaptive skill.

(3) Training in adaptive skills of blindness may be provided to a ~~((customer))~~ participant under an individualized plan for employment in accordance with WAC ~~((67-25-260))~~ 67-25-230, or during the assessment to determine rehabilitation needs in accordance with WAC ~~((67-25-257))~~ 67-25-210.

(4) The department may operate and maintain an orientation and training center as a structured setting to provide assessment and training in adaptive skills of blindness for ~~((customers))~~ participants who may benefit from intensive adaptive skills training.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-399 Vocational rehabilitation services—Transition ~~((services for students))~~ for youth. (1) Transition services are a coordinated set of ~~((outcome based activities for blind students, age fourteen to twenty one, designed to facilitate school to employment~~

~~((2) Activities shall be based on the individual student's needs, taking into account the student's preferences and interests. Activities shall include instruction, community experience, functional assessment, employment development, instruction in daily living skills, and development of other post-school adult living objectives. Additional activities may include post-secondary education, vocational training, integrated employment (including supported employment), adult services, and independent living.~~

~~((3) Students, age sixteen to twenty one, who choose to seek an employment outcome will be referred to the vocational rehabilitation program.~~

~~((4) Case management activities for students who apply for vocational rehabilitation services will be coordinated between the child and family program of the department and the vocational rehabilitation program until the student leaves the K-12 school system))~~ activities for a youth with a disability not older than twenty-four years of age, designed within an outcome-oriented process that promotes movement from school to post-school activities, including post-secondary education, work exploration and experience, vocational training, continuing and adult education, adult services, adaptive skills training and independent living, community participa-

tion, all leading to competitive and integrated employment (with or without long-term supports).

(a) Transition services are based upon the individual youth's needs, taking into account the youth's preferences and interests, and includes instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;

(b) Promotes or facilitates the achievement of the employment outcome identified in the youth's individualized plan for employment and includes outreach to and engagement of the parents, or, as appropriate, the representative of such a youth with a disability.

(2)(a) Transition services are distinguished from pre-employment transition services because they are specific, individualized, and planned services for eligible VR participants.

(b) Preemployment transition services are more general and exploratory, and may be provided to individuals who are potentially eligible for VR services, and are not older than twenty-one years of age (WAC 67-25-290).

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-400 Vocational rehabilitation services—Maintenance. (1) Maintenance for living expenses may be provided only when these expenses are short-term in duration, in excess of the normal subsistence expenses of a ~~((customer))~~ participant, and only when necessary for the individual to participate in services under an individualized plan for employment. Maintenance includes monetary support for food, shelter, clothing and other subsistence items.

(2) Maintenance shall be provided only after consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

(3) Individuals with emergency needs for shelter, food, financial support, etc. will be referred to community sources ~~((who may))~~ that may provide these services.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-404 Vocational rehabilitation services—Transportation. (1) Transportation services for travel and related expenses may be authorized if necessary for an applicant ~~((or a customer)),~~ eligible individual, or participant to receive any vocational rehabilitation service.

(2) Transportation may include:

(a) Fares or travel costs associated with using public or private vehicle;

(b) Food and lodging while in travel status;

(c) Wages, travel, and related expenses for a driver, attendant or aide if the services of that person are necessary for the ~~((customer))~~ individual to travel;

(d) Relocation and moving expenses, if necessary for ~~((the vocational rehabilitation of the individual))~~ securing a competitive and integrated employment outcome.

(3) Transportation services shall be provided only after consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-408 Vocational rehabilitation services—~~((Services)) To family members.~~ (1) A family member is an individual:

(a) Who is a relative or guardian of a customer, or who lives in the same household as a ~~((customer))~~ participant;

(b) Who is integrally involved in the vocational rehabilitation of the ~~((customer))~~ participant; and

(c) Whose receipt of vocational rehabilitation services would further the vocational rehabilitation of the ~~((customer))~~ participant.

(2) Services provided to family members may include any vocational rehabilitation services available to customers in accordance with WAC ~~((67-25-350. However,))~~ 67-25-265.

(a) The services must be directly related to the vocational rehabilitation of the ~~((customer))~~ participant.

(b) Family members of any age may be served.

(3) A vocational rehabilitation service provided to family members shall be terminated when it no longer substantially contributes to the vocational rehabilitation of the ~~((customer))~~ participant.

(4) Services to family members shall be provided only after consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-412 Vocational rehabilitation services—Interpreter and translation~~((s services))~~. (1) Interpreter services include sign language or oral interpretation services for individuals who are deaf~~((s))~~ or hard of hearing, and tactile interpretation services for individuals who are deaf-blind.

(a) Interpreter services must be provided by qualified personnel.

(b) Interpreter services shall be authorized, to the maximum extent possible, in accordance with the department of social and health services schedule of maximum allowances and program descriptions.

(2) Translation services are provided to non-English speaking individuals, and for the individual's representative if appropriate, during all phases of the rehabilitation process including mediation, fair hearing, and judicial review.

(a) Translation services include oral translation of English into the primary language of an individual.

(b) Upon request, the following written communication shall be translated into the primary language of an applicant or customer:

(i) Application for services;

(ii) Notification of eligibility or ineligibility;

(iii) Individualized plan for employment;

(iv) Notification of case closure;

(v) Notification of annual review, if appropriate; and

(vi) Any notice requiring a response or a signature from an individual to continue receiving services.

(c) The department shall translate the Washington Administrative Code (WAC) regarding VR services or ser-

vice providers into the primary language of an applicant or customer upon his or her request.

(d) Translation services shall be authorized in accordance with procedures and fee schedules established by the department.

(3) Vocational rehabilitation expenditures for interpreter or translation services for applicants ~~((and customers)),~~ eligible individuals and participants will be authorized ~~((in accordance with WAC 67-25-360))~~ only after consideration of comparable services and benefits in accordance with WAC 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-416 Vocational rehabilitation services—Reader ~~((services))~~. (1) Reader services may be provided to an applicant ~~((or customer)),~~ eligible individual, or participant when necessary to the provision of other vocational rehabilitation services.

(2) Reader services consist of orally reading to the blind individual print material ~~((to the blind customer))~~ which is not available through other appropriate modes of communication.

(3) If reader services are necessary beyond the initial stages of employment, the department shall, if desired by the individual, assist him or her to negotiate with the employer for reader services as a reasonable accommodation.

(4) Reader services shall be purchased in accordance with the department's procedures and shall be provided only after consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-418 Vocational rehabilitation services—Personal assistance ~~((services))~~. (1) Personal assistance services include a range of services provided by at least one person to assist an individual with a disability to perform daily living activities, on or off the job, that the individual typically would perform if he or she did not have a disability, and will not be able to perform even after receiving adaptive skills training.

This includes personal attendant services~~((s))~~, which are personal services that an attendant performs for an individual with a disability~~((s))~~ including, but not limited to, bathing, feeding, dressing, providing mobility and transportation.

(2) These services shall, to the extent appropriate and desired by the ~~((customer))~~ participant, include training in managing, supervising, and directing their personal assistance services.

~~((2))~~ (3) Personal assistance services may be provided, if necessary, for the ~~((customer))~~ participant to achieve ~~((an))~~ a competitive and integrated employment outcome, and shall be provided only while the ~~((customer))~~ participant is receiving other vocational rehabilitation services.

~~((3))~~ (4) The case service record must document how personal assistance services will be provided after the completion of vocational rehabilitation services or, to the extent that it is not possible to identify how personal assistance ser-

vices will be provided when the individualized plan for employment is developed, there must be a description of the basis for concluding that there is a reasonable expectation that resources will become available.

~~((4))~~ (5) Personal assistance services are provided only after consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-432 Vocational rehabilitation services—~~Rehabilitation technology ((and telecommunications)).~~

(1) Rehabilitation technology is the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address barriers ~~((confronted by customers))~~ that might be experienced by a participant in education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(2) The department will provide, as appropriate, rehabilitation technology services throughout all phases of the vocational rehabilitation process for ~~((customers))~~ participants.

(3) Rehabilitation technology services may include:

- (a) Assessment to determine rehabilitation technology needs;
- (b) Job site and training site analysis including testing and research;
- (c) Rehabilitation engineering services;
- (d) Comprehensive training in the use of assistive technology devices;
- (e) Procurement, installation and follow-up related to assistive technology devices.

~~((3))~~ (4) Any assistive technology device requiring an individualized prescription or fitting must be provided by a professional who meets any licensing or certification requirements to fill the prescription or to perform the fitting. Aids and devices not requiring individual fittings must meet engineering and safety standards recognized by experts in the field.

~~((4))~~ Telecommunications services include telecommunication devices and relay services for individuals who are deaf or hearing-impaired. Telecommunications) (5) Rehabilitation technologies and relay services for individuals who are deaf or hearing-impaired shall be utilized as necessary for service delivery.

~~((5))~~ (6) Rehabilitation technology services shall be provided without consideration of comparable services and benefits pursuant to WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-436 Vocational rehabilitation services—~~Supported employment ((services and extended services)).~~

(1) Supported employment is competitive employment in an integrated setting, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, with ongoing support services for ~~((customers))~~ participants with

the most significant disabilities who ~~((need))~~ require intensive, ongoing support to perform in a work setting.

~~(2) ((A customer may be employed in an extended employment setting in which he or she is working toward competitive employment as a planned step in the process of completing an employment outcome in supported employment. While the customer is working toward competitive employment, he or she may be certified to be paid subminimum wages, consistent with provisions of the Fair Labor Standards Act, based on his or her productivity.~~

~~(3))~~ An individual shall be eligible to receive supported employment services if:

(a) The individual is eligible for vocational rehabilitation services in accordance with WAC ~~((67-25-030))~~ 67-25-130;

(b) The individual needs intensive supported employment services from the department and ongoing services from other resources to perform competitive and integrated work due to the nature and significance of his or her disabilities; and

(c) Supported employment is an appropriate employment outcome, with or without customized job tasks as defined in WAC 67-25-009, for the individual based on a comprehensive assessment of his or her rehabilitation needs in accordance with WAC ~~((67-25-255))~~ 67-25-205.

~~((4) A customer))~~ (3) A participant with an employment outcome of supported employment may receive any vocational rehabilitation service described in WAC ~~((67-25-350))~~ 67-25-265.

~~((5))~~ (4) Supported employment must occur in ~~((an))~~ a competitive and integrated work setting (as defined in WAC 67-25-009) for the maximum number of hours possible, based on the unique strengths, resources, interests, concerns, abilities, and capabilities of the ~~((customer))~~ participant with significant disabilities. ~~((An integrated setting, in the context of supported employment, is one where:~~

~~(a) Most coworkers are not disabled and the customer is not part of a work group of individuals with disabilities; or~~

~~(b) Most coworkers are not disabled, and if a job site as described in (a) of this subsection is not possible, the customer is part of a small work group of not more than eight individuals with disabilities; or~~

~~(c) If there are no coworkers, or the only coworkers are members of a small work group of not more than eight individuals all of whom have disabilities, the customer has regular contact with nondisabled individuals (other than personnel providing support services) in the immediate work setting.~~

~~(6) The department shall provide intensive training and support services during the first eighteen months of supported employment to facilitate the customer's adjustment at the worksite and determine the need for extended services from other resources. Additional services beyond eighteen months may be authorized with supervisory approval based on evidence that additional ongoing support is needed to stabilize the individual in employment. If such evidence is not available, the department must close the case. Support must include:~~

~~(a) Ongoing assessment of the customer's employment situation, or under special circumstances or request of the customer, an assessment regarding the customer's employ-~~

ment situation that takes place away from the worksite to: Determine what is needed to maintain job stability; and coordinate services or provide specific intensive services that are needed at or away from the customer's worksite to assist the individual in maintaining job stability.

(b) Intensive job skill training for the customer at the job site by skilled job trainers.

(c) Job development, job placement and job retention services.

(d) Social skills training.

(e) Regular observations or supervision.

(f) Follow-up services such as regular contacts with the customer's employer, the customer, or the customer's representative, and other appropriate individuals to help strengthen and stabilize the job placement.

(g) Facilitation of natural supports at the worksite.

(h) Other services similar to services described in (a) through (g) of this subsection.

(i) Any other vocational rehabilitation services.

(7) The customer shall transition to extended services after receiving supported employment services from the vocational rehabilitation program. Extended services are ongoing support services and other appropriate services needed to support and maintain the customer in supported employment. Long-term funding for extended services may be provided through cooperative agreements with public agencies, nonprofit agencies or organizations; employers; natural supports; and any resource other than federal vocational rehabilitation funds.)

(5) The determination to provide long-term supports must include:

(a) Ongoing assessment of the participant's employment situation to:

(i) Determine what is needed to maintain job stability; and

(ii) Coordinate services or provide specific intensive services that are needed at or away from the participant's worksite to assist the individual in maintaining job stability.

Under special circumstances and request of the participant, such an assessment might take place away from the worksite.

(b) Job development, job placement, and job retention services, with or without customization of job tasks;

(c) Intensive job skill training for the participant at the job site by qualified providers;

(d) Social skills training;

(e) Regular observations or supervision;

(f) Follow-up services, such as regular contacts with the participant's employer, the participant, or the participant's representative, and other appropriate individuals to help strengthen and stabilize the job placement;

(g) Facilitation of natural supports at the worksite;

(h) Other services similar to services described in (a) through (g) of this subsection; and

(i) Any other required vocational rehabilitation services.

(6) The participant shall transition to extended services after receiving supported employment services from the vocational rehabilitation program.

(a) Extended services are ongoing support services necessary to support and maintain the participant in competitive

and integrated employment, with or without customization of job tasks.

(b) Long-term funding for extended services may be provided through cooperative agreements with public agencies, nonprofit agencies or organizations; employers; natural supports; and any resource other than federal vocational rehabilitation funds.

(7) The department may provide intensive training and support services during the period which extended services from other resources are identified and implemented as follows:

(a) The department can provide intensive training and support services for up to twenty-four months to facilitate the participant's adjustment at the worksite while resources for extended services are being finalized;

(b) If the individual who requires long-term supports is a youth with a disability, the department may provide intensive training and support services for up to forty-eight months;

(c) If resources for extended services are not identified and implemented within those time frames, the department must close the case and exit the individual from department services per WAC 67-25-565.

(8) An individualized plan for employment with ~~((an))~~ a competitive and integrated employment outcome ~~((of supported employment))~~ with long-term supports must specify the expected extended services needed and, must identify the source, including natural supports, of extended services. If the source of extended services cannot be identified when the individualized plan for employment is developed, supported employment services shall be initiated while resources to provide extended services are sought per the limits described in this section.

(9) A ~~((customer))~~ participant with an employment outcome of supported employment may receive post-employment services in accordance with WAC ~~((67-25-444))~~ 67-25-450 when the services to be provided are not the responsibility of the extended services provider.

(10) The department shall provide transitional employment services as supported employment services for a ~~((customer))~~ participant with a significant disability due to mental illness. Transitional employment is a series of temporary ~~((competitive))~~ job placements in competitive and integrated work settings with ongoing support services. In transitional employment, ongoing support services must include continuing sequential job placements until job permanency is achieved.

(11) Supported employment services are provided only after consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-440 Vocational rehabilitation services—Job placement. (1) Job placement services shall be provided to a ~~((customer))~~ participant under an individualized plan for employment to assist the individual with obtaining and retaining appropriate competitive and integrated employment consistent with his or her employment ~~((outcome))~~ goal.

(2) The department and ~~((customer))~~ participant shall be mutually responsible to find and secure suitable employment for the individual.

(a) The individualized plan for employment shall describe the nature and scope of job placement services to be provided by the department, and the participant's responsibility to actively and independently conduct job-seeking efforts.

(b) The individualized employment plan shall also describe if customized employment services, as defined in WAC 67-25-093, are expected to be a necessary job placement service.

(3) Job placement services include the following range of activities:

(a) ~~((Job development and employer relations (which may or may not be on behalf of a specific customer);~~

~~(b) Job task analysis to determine how a person who is blind can be accommodated in a position;~~

~~(c) Job-seeking skills training to prepare a customer for employment;~~

~~(d) Communication and negotiation with a variety of employment resources and other community resources regarding employment of people who are blind;~~

~~(e) Work skill building, counseling, and other follow-up and follow-along services to stabilize the customer in employment until the employment outcome has been satisfactorily achieved.)) Job-search skills training to prepare a participant for competitive and integrated employment;~~

(b) Communication and negotiation with a variety of employment resources and other community resources regarding employment of people who are blind;

(c) Job task analysis to determine how a person who is blind can be accommodated in a position and to identify if customization of the job is necessary for an individual;

(d) Work readiness skill building, counseling, and other follow-up and follow-along services to stabilize the participant in competitive and integrated employment until the employment outcome has been satisfactorily achieved;

(e) Job development and employer engagement (which may or may not be on behalf of a specific participant);

Employer engagement may include negotiation of a proposed job customization and integration of long-term supports, as necessary.

(4) Placement services may be provided using the following methods:

(a) Vocational rehabilitation counselors or staff employed by the department.

(b) An ~~((employee))~~ individual specializing in business ~~((relations))~~ engagement may provide placement services through communication and negotiation with a variety of employers and community resources, regarding employment of people who are blind.

(c) No-cost placement resources in the community such as ~~((one-stop WorkSource centers, projects with industry))~~ WIOA partners in the American job centers, registered apprenticeship programs, and other entities shall be utilized whenever possible.

(d) Job placement services may be purchased when it is in the ~~((customer's))~~ participant's vocational interests, when the department's services are not otherwise available, or

when placement is offered by an employment service provider as part of a service package.

(5) Job placement services shall be terminated when the ~~((customer))~~ participant has been provided vocational rehabilitation services, in accordance with an individualized plan for employment, which have enabled the individual to obtain and retain employment in ~~((an))~~ a competitive and integrated setting consistent with his or her capacities and abilities, with job stability achieved for at least ninety days.

(6) Job placement services shall be provided without consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-444 Vocational rehabilitation services—Post-employment ~~((services))~~. (1) Post-employment services may be provided to a ~~((customer, subsequent to))~~ participant after achieving ~~((an))~~ a competitive and integrated employment outcome, if they are necessary for the ~~((customer))~~ participant to maintain, regain, or advance in employment consistent with the individual's abilities, capabilities, and interests.

(2) Post-employment services are intended to provide short-term and discrete intervention related to the established competitive and integrated employment outcome. ~~((Accordingly,))~~

(3) Post-employment services do not require a new determination of eligibility, and may be provided ~~((as long as the established individualized plan for employment and necessary documentation are available and pertinent))~~ within three years of case closure.

~~((3))~~ (4) Post-employment services include all vocational rehabilitation services identified in WAC ~~((67-25-350))~~ 67-25-265 and are subject to any conditions affecting provision of that vocational rehabilitation service.

AMENDATORY SECTION (Amending WSR 06-18-049, filed 8/30/06, effective 9/30/06)

WAC 67-25-446 Vocational rehabilitation services—~~((Services))~~ To groups. (1) The department may provide the following vocational rehabilitation services to groups of individuals:

(a) Establishment, development, or improvement of a public or other nonprofit employment service provider providing services that promote integration and competitive employment~~((-));~~

(b) Development and implementation of services that enhance the use of modes of communication or telecommunications for individuals with disabilities~~((-));~~

(c) Technical assistance and support services, such as job site modification and other reasonable accommodations, for businesses not subject to Title I of the Americans with Disabilities Act of 1990 that are seeking to employ individuals with disabilities~~((-));~~

(d) Establishment of small business enterprises, operated by individuals with the most significant disabilities under supervision of the department, including, management ser-

vices and supervision, and the acquisition of vending facilities, equipment, initial stocks, and supplies((-);

(e) Consultation services to assist educational agencies in transition of students with disabilities to post-school activities, including employment((-);

(f) Other services that promise to contribute substantially to the rehabilitation of a group of individuals, but that are not related directly to the individualized plan for employment of any one individual.

(2) Services to groups are provided in accordance with department procedures for the provision of these services.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-448 Vocational rehabilitation services—Occupational licenses, tools, equipment, initial stocks and supplies and other technical assistance for self-employment.

(1) Goods and services described in this section may be provided only under an individualized plan for employment when necessary for the ~~((customer))~~ participant to achieve an employment outcome(~~(-The department will pay for a customer to be bonded if the employment he or she is entering requires a bond and the customer supplies all necessary information to the bonding firm.~~

(2) Occupational licenses are licenses, permits, or certificates showing that the individual meets certain standards, has accomplished certain achievements, or has paid dues, fees, or has other written authority required by a state, city, or other government unit that qualifies the individual to engage in a business, specific trade, or other work.

(3) Occupational tools include those customarily required for a worker to perform efficiently on the job, and which workers in the same or similar trade or profession are normally provided. These may include specialized tools adapted to accommodate the individual's disability.

(4) Occupational equipment includes occupational fixtures normally found in places of business. These include machinery, and appliances that are usually stationary during utilization. However, self-powered vehicles may also be provided.

(5) Initial stocks include the initial inventory of merchandise or goods necessary for a participant to enter self-employment. It may also include the initial purchase of livestock as a base stock, and stocks of seed, fertilizer, fuel, etc., for farming or agricultural self-employment.

(6) Initial supplies include expendable items necessary for the customer to carry out day-to-day business operations, and which are consumed on the premises in the course of the customer's self-employment business or in a business enterprise location.

(7) Purchase, accountability, legal title, insurance, maintenance, and other considerations regarding provision of goods and services described in this section are addressed in the department's procedures governing their provision.

(8) Goods and services described in this section shall be provided only after consideration of comparable services and benefits in accordance with WAC 67-25-360) or establish a small business, including:

(a) A participant to be bonded if the employment he or she is entering requires a bond and the participant supplies all necessary information to the bonding firm;

(b) Occupational licenses, permits, or certificates showing that the individual meets certain standards, has accomplished certain achievements, or has paid dues, fees, or has other written authority required by a state, city, or other government unit that qualifies the individual to engage in a business, specific trade, or other work;

(c) Occupational tools which are customarily required for a worker to perform efficiently on the job, and which workers in the same or similar trade or profession are normally provided. These may include specialized tools adapted to accommodate the individual's disability;

(d) Occupational equipment and occupational fixtures normally found in places of business. These include machinery, and appliances that are usually stationary during utilization. However, self-powered vehicles may also be provided as occupational equipment;

(e) Initial stocks such as the initial inventory of merchandise or goods necessary for a participant to enter self-employment. It may also include the initial purchase of livestock as a base stock, and stocks of seed, fertilizer, fuel, etc., for farming or agricultural self-employment;

(f) Initial supplies including expendable items necessary for the participant to carry out day-to-day business operations, and which are consumed on the premises in the course of the participant's self-employment business or in a business enterprise location;

(g) Technical assistance including consultation and other services provided to conduct market analyses, to develop business plans, and to provide resources to individuals in the pursuit of self-employment, telecommuting and small-business operations.

(2) Goods and services described in this section shall be provided only after consideration of comparable services and benefits in accordance with WAC 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-452 Vocational rehabilitation services ((provided))—Other ((goods and services)). (1) Other goods and services not described in this chapter may be provided to a ~~((customer))~~ participant when necessary to determine the individual's eligibility for services and rehabilitation needs, or when necessary for the individual to achieve an appropriate competitive and integrated employment outcome.

(2) Other goods and services, except those required for assessment of the individual, shall be provided only after consideration of comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-460 Eligibility—Order of ((priority)) selection. (1) The purpose of an order of ~~((priority))~~ selection is to establish an equitable and organized system which, when resources are not sufficient to meet the demand for ser-

ices, gives ~~((the first))~~ priority to those eligible vocational rehabilitation ~~((customers who meet the definition of most significantly disabled, in accordance with WAC 67-25-460))~~ individuals who are most in need of services.

(2) When the order of ~~((priority))~~ selection is in effect, eligible individuals will be assigned to one of ~~((two))~~ three priority categories:

(a) ~~((First))~~ Immediate priority: New ~~((eligible customers who meet the definition of most significantly disabled.~~

~~((b))~~ Second priority: New eligible customers who do not meet the definition of most significantly disabled) applicants who meet eligibility criteria of at least significant disability, and who require immediate services or tools to maintain a current job;

(i) Only the immediate services or tools required to maintain the current job can be provided under this immediate priority;

(ii) Once the immediate services or tools are provided and the job is stable, any further service provision requires being placed on the wait list and served in the priority and order for the significance of disability category that the individual qualifies for;

(b) First priority: New applicants who meet eligibility criteria of most significantly disabled, per WAC 67-25-183.

(c) Second priority: New applicants who do not meet the definition of most significantly disabled, per WAC 67-25-183.

(3) The department's executive director shall decide when to implement an order of ~~((priority))~~ selection, if necessary, and will determine which priority categories will be open or closed for the development of new individualized plans for employment. In the event sufficient funds or other resources become available to serve all eligible individuals, the order of ~~((priority))~~ selection will be revoked by the director.

(4) Eligible individuals can develop and carry out an individualized plan for employment based on:

(a) The priority of the category to which they are assigned;

(b) Whether or not that category is open for development of new plans; and

(c) The order in which they applied for vocational rehabilitation services as indicated by the date of application.

(5) ~~((Customers))~~ Eligible individuals will be placed in the highest priority category for which they are qualified. The date of application will be used whenever it is determined that a waiting list is required for a category.

(6) ~~((Customers))~~ Eligible individuals will be notified in writing of their category status when they are notified of their eligibility, as well as of the conditions pertaining to that category:

(a) Whether the category is currently open or closed.

(b) ~~((Their position on any))~~ The current status of an existing waiting list within that category.

(7)(a) The only services to individuals in a closed order of priority category will be information and referral services. These individuals will not receive counseling and guidance, assessment and training, job placement, or other vocational rehabilitation services until their category is reopened ~~((and))~~, they come off the waiting list and they complete an

individualized plan for employment with an agency vocational rehabilitation counselor.

(b) Preemployment transition services as described in WAC 67-25-290 may be available to qualified students with a disability without consideration for priority categories or wait lists for the duration of an order of selection for the department.

(8) ~~((Customers))~~ Eligible individuals will be notified of the right to appeal the category decision, in accordance with WAC ~~((67-25-570))~~ 67-25-600, and of their responsibility to notify the department if their situation changes in a way that may affect their priority category placement.

(9) ~~((Individuals))~~ Participants who are receiving services under an individualized plan for employment at the time an order of ~~((priority))~~ selection is implemented will continue to receive services as planned. They are not subject to the order of ~~((priority))~~ selection and are not a category within that order.

(10) The order of ~~((priority))~~ selection will not affect the provision of services needed to determine eligibility for vocational rehabilitation services, ~~((WAC 67-25-010 through 67-25-030))~~ in accordance with WAC 67-25-125.

NEW SECTION

WAC 67-25-503 Vocational rehabilitation services—Limitations on use of subminimum wage. (1) Section 511 of WIOA Title IV limits the use of subminimum wage. Individuals age twenty-four or younger may not begin work that pays a subminimum wage (less than federal minimum wage) unless the following actions have been completed:

(a) The individual received preemployment transition services or transition services under IDEA; and

(b) The individual applied for VR services and has been found ineligible for services; or

(c) The individual has been determined eligible for VR services but has not been successful towards achieving a specific planned competitive integrated employment goal, with or without supports and/or customization, and client record of services closed; and

(d) The individual has been provided career counseling and information and referral to other resources designed to assist the person in attaining competitive integrated employment in a manner that:

(i) Is understandable to the individual with a disability;

(ii) Facilitates independent decision making and informed choice as the individual makes decisions regarding opportunities for competitive integrated employment and career advancement, particularly with respect to supported employment, including customized employment (WAC 67-25-183);

(iii) The career counseling and information and referral services provided under this section may include benefits counseling, particularly with regard to the interplay between earned income and income-based financial, medical, and other benefits.

(2) When an individual has refused to participate in an activity required by this section, documentation must be provided to the individual within ten calendar days of the individual's refusal to participate.

(a) Such documentation must, at a minimum, contain the:

- (i) Name of the individual;
- (ii) Description of the refusal and the reason for such refusal;
- (iii) Signature of the individual or, as applicable, the individual's representative;
- (iv) Signature of the department personnel documenting the individual's refusal;
- (v) Date of signatures; and
- (vi) Date and method (e.g., hand delivered, faxed, mailed, emailed, etc.) by which documentation was transmitted to the individual.

(b) The department must retain a copy of all documentation required by this part in a manner consistent with the department's case management system and the requirements of WAC 67-25-073.

(3) Upon a referral by an entity that has fewer than fifteen employees of an individual with a disability who is employed at a subminimum wage by that entity, DSB will also inform the individual within thirty calendar days of the referral by the entity, and of self-advocacy, self-determination, and peer mentoring training opportunities available in the community.

(4) Nothing in this section will be construed as requiring the department to provide the services required by this section directly. The department may contract with other entities, i.e., other public and private service providers, as appropriate, to fulfill the requirements of this section. The contractor providing the services on behalf of the designated state unit may not be an entity holding a special wage certificate under Section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)).

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

~~WAC 67-25-540 ((Individualized plan for employment—Successful rehabilitation.)) VR program exit—Employment outcome.~~ ((1) An individual shall be considered successfully rehabilitated when he or she has maintained an employment outcome for at least ninety days that is:

- (a) The result of services provided under an individualized plan for employment;
- (b) Commensurate with the individual's unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice; and
- (c) Whenever possible, employment achieved is competitive as defined by being in the competitive labor market, performed on a full-time or part-time basis in an integrated setting, and the individual is compensated at or above the minimum wage, and the individual's wage and level of benefits are not less than that paid by the employer for the same or similar work performed by nondisabled individuals;
- (d) In the most integrated setting possible, consistent with the individual's informed choice; and
- (e) Considered to be a satisfactory employment outcome by both the customer and vocational rehabilitation counselor with agreement that the customer is performing satisfactorily on the job.

~~(2) The individual shall be notified of the termination decision and appeal procedures in accordance with WAC 67-25-545.))~~ (1) The record of services of an individual who has achieved a competitive and integrated employment outcome may be closed only if all of the following requirements are met:

(a) The individual has achieved the employment outcome that is described in the individual's individualized plan for employment in accordance with WAC 67-25-240 and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, and in a competitive and integrated employment setting.

(b) The individual has maintained the competitive and integrated employment outcome for an appropriate period of time, having achieved job stability not less than ninety days, and the individual no longer needs vocational rehabilitation services.

(c) At the end of the appropriate period under (b) of this subsection, the individual and the department's rehabilitation counselor consider the competitive and integrated employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(d) The individual is informed through appropriate modes of communication of the availability of post-employment services in accordance with WAC 67-25-593 and 67-25-450.

~~(2) The individual shall be notified of the decision to exit services and appeal procedures in accordance with WAC 67-25-600.~~

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

~~WAC 67-25-545 VR program exit—Notification ((of termination)).~~ (1) The department shall provide written notification to every individual who has applied for services, in the individual's primary language if necessary, and using appropriate modes of communication, when a determination is made to ~~((terminate services to))~~ exit the individual from the VR program and end further activity, in accordance with WAC 67-25-553, 67-25-565 and 67-25-575.

(2) The written notice shall specify in detail the reasons for the decision to ~~((terminate))~~ end services and shall clearly inform the individual of the right to mediation and fair hearing in accordance with WAC ~~((67-25-570))~~ 67-25-600. A description of client assistance program services shall also be provided.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

~~WAC 67-25-550 Vocational rehabilitation—Confidential information—Protection((-) and release).~~ (1) Confidential information refers to all documented and undocumented personal information, including lists of names and photographs, about any past or present applicant or customer in the vocational rehabilitation program, given or made available to the department, its representatives, or its agents in the course of the administration of the program.

(2) Customers, their representatives as appropriate, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of personal information and policies governing its use. This information shall be provided to the applicant or customer, and to the individual's representative in the individual's primary language if necessary, using appropriate modes of communication, and shall include:

(a) Identification of the authority under which information is collected;

(b) Explanation of the principal purposes for which the department intends to use or release information;

(c) Explanation of whether providing requested information is mandatory or voluntary and the effects of not providing requested information;

(d) Identification of those situations where the department requires or does not require informed written consent of the individual before information may be released; and

(e) Identification of other agencies to which information is routinely released.

(3) All personal information must be used only for purposes directly connected with the administration of the vocational rehabilitation program. Personal information shall not be shared with an organization, agency or individual not having official responsibility for administration of the program, except as provided for in subsection (6) of this section.

(4) Except as provided in (a) and (b) of this subsection, the department shall, upon receipt of a written request by a customer, release all information in that individual's record, to the individual or the individual's representative within fifteen working days.

(a) Medical, psychological, or other information that the department determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual's representative or to a qualified medical or psychological professional or to a person appointed by the court to act as that individual's representative.

(b) Personal information obtained from service providers and cooperating agencies under assurances that the information shall not be further divulged may be released only under conditions established by the other agency or organization except as provided in subsections (5) and (6) of this section.

(5) The customer may request that misleading or inaccurate information in his or her record of services be amended and that such request for amendment be documented in the individual's record.

(6) Personal information may be released to an organization, agency, or individual for purposes of audit, evaluation, or research directly connected with administration of the vocational rehabilitation program, such as the department's rehabilitation council or for purposes that would significantly improve the quality of life for customers, and only if the organization, agency, or individual assures that:

(a) Information shall be used only for the purposes for which it is being provided;

(b) Information shall be released only to persons officially connected with the audit, evaluation, or research;

(c) Information shall not be released to the customer;

(d) Information shall be managed in a manner to safeguard confidentiality; and

(e) The final product shall not reveal any personal identifying information without the informed written consent of the customer or the individual's representative.

(7) The department may release personal information to other agencies and programs under the following conditions:

(a) Upon receiving the informed written consent of the customer, or, the individual's representative if appropriate, the department may release personal information to another agency or organization only to the extent that the information may be released to the customer, and only to the extent that the agency or organization demonstrates that the information requested is necessary for its program.

However, medical or psychological information that the department determines may be harmful to the individual may be released if the agency or organization assures the department that information shall be used only for the purpose for which it is being provided and shall not be released to the customer.

(b) The department shall release personal information if required by federal law or regulation.

(c) The department shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, or in response to judicial order.

(d) The department may release personal information to protect the participant or others if the individual poses a threat to his or her safety or to the safety of others.

NEW SECTION

WAC 67-25-565 VR program exit—Supported employment. (1) The service record of an individual with a most significant disability who has achieved a competitive and integrated employment outcome that requires long-term supports (with or without customization of job tasks) will be closed concurrently with the achievement of the employment outcome when the individual:

(a) Satisfies requirements for case closure, as set forth in WAC 67-25-051; and

(b) The department is not (or is no longer) providing extended services or any other vocational rehabilitation service to the individual.

(2) The service record of a youth with a most significant disability who is receiving extended services provided by the department will be closed when:

(a) The youth with a most significant disability achieves a competitive and integrated employment outcome with supports (with or without customization of job tasks); and

(b) Is no longer eligible to receive extended services provided by the department because the individual:

(i) No longer meets age requirements established in the definition of a youth with a disability in accordance with 67-25-093;

(ii) Has received extended services for a period of forty-eight months; or

(iii) Has transitioned to extended services provided with funds by an entity other than the department prior to meeting the age or time restrictions established under (b)(i) and (ii) of this subsection, respectively.

(c) The individual satisfies requirements for case closure, in accordance with WAC 67-25-051; and

(d) The individual is no longer receiving any other vocational rehabilitation service from the department.

AMENDATORY SECTION (Amending WSR 08-19-068, filed 9/15/08, effective 10/16/08)

WAC 67-25-570 Resolving a disagreement about vocational rehabilitation services. (1) If at any time during the vocational rehabilitation process((τ)) the department makes a decision relating to the provision of vocational rehabilitation services that a ((~~eustomer~~)) participant does not agree with, the ((~~eustomer~~)) participant or the ((~~eustomer's~~)) participant's representative has the right to use one or more of the following options to resolve the issue:

(a) Talk to the vocational rehabilitation counselor or to the counselor's supervisor to resolve the disagreement;

(b) Ask for help or information from the client assistance program;

(c) Request mediation; and/or

(d) Request a fair hearing.

(2) Efforts to reach agreement with the vocational rehabilitation counselor or supervisor will not be used to deny or delay mediation or a fair hearing.

(3) Mediation is voluntary and must be agreed to by both the ((~~eustomer~~)) participant and the department. Mediation is not used to deny or delay a fair hearing. A ((~~eustomer~~)) participant may request both mediation and a fair hearing at the same time((-)) if agreement is:

(a) Reached during mediation, the fair hearing is canceled.

(b) Not reached during mediation, the fair hearing is held as scheduled.

(4) Mediation is conducted by a trained mediator who knows the laws and rules about vocational rehabilitation services and who does not work for the department. The mediator does not make case service decisions.

(5) During mediation, the mediator:

(a) Allows each party to present information or evidence;

(b) Helps each party listen to and understand the other party's position;

(c) Reviews and explains any laws that apply; and

(d) Facilitates an agreement, if possible, between the parties.

(6) If agreement is reached during mediation, the department will provide a written statement of the agreement to the ((~~eustomer~~)) participant. Agreements made through mediation are not legally binding.

(7) The ((~~eustomer~~)) participant may choose to be represented by a family member, advocate or other individual at the mediation meeting.

(8) The department schedules mediation sessions in a timely manner at a convenient location to all parties.

(9) The department pays for costs related to mediation, except costs related to a representative or attorney engaged by the ((~~eustomer~~)) participant.

(10) The department will pay for vocational rehabilitation services necessary for the ((~~eustomer to participate~~)) par-

icipant to engage in mediation, such as transportation or child care.

(11) Information discussed during mediation is kept confidential and may not be used in a later hearing or civil proceeding, if one is held. Before beginning a mediation session, all parties must sign a statement of confidentiality.

(12) A fair hearing is a proceeding as outlined under the Administrative Procedure Act, chapter 34.05 RCW and chapter 388-02 WAC. An administrative law judge who works for the office of administrative hearings holds a fair hearing.

(13) A ((~~eustomer~~)) participant who does not agree with a decision made by the department about eligibility or vocational rehabilitation services may ask for a fair hearing within forty-five calendar days of that decision.

(14) To ask for a fair hearing, the ((~~eustomer~~)) participant must send a written request to the office of administrative hearings. The written request must include:

(a) The ((~~eustomer's~~)) participant's name, address, and telephone number;

(b) A written statement about the decision and the reasons for disagreement; and

(c) Any other information that supports the ((~~eustomer's~~)) participant's position.

(15) The office of administrative hearings must hold a formal hearing within sixty days of receipt of written request for a hearing, unless:

(a) The ((~~eustomer~~)) participant or the department ask for a delay; and

(b) There is a reasonable cause for the delay.

(16) After the ((~~eustomer~~)) participant submits a request for a fair hearing, the department will offer the ((~~eustomer~~)) participant a prehearing meeting. The prehearing is optional for the ((~~eustomer~~)) participant and can be conducted in person, by telephone, or by another method agreeable to both parties. The purpose of the prehearing meeting is to:

(a) Clarify the decision with which the ((~~eustomer~~)) participant disagrees;

(b) Provide copies of laws, rules or other information to be presented in the fair hearing;

(c) Explain how the fair hearing is conducted; and

(d) Settle the disagreement, if possible.

(17) During the formal hearing, the ((~~eustomer~~)) participant and the department may present information, witnesses and/or documents to support their position.

(18) The ((~~eustomer~~)) participant may choose to be represented by an attorney, a relative, or someone else;

(19) The administrative law judge makes a decision after:

(a) Hearing all of the information presented;

(b) Reviewing any documents submitted; and

(c) Reviewing relevant federal and state laws and regulations.

(20) The office of administrative hearings sends a written report of the findings and decisions to the customer and to the department within thirty days of the formal hearing.

(21) The office of administrative hearings decision is final and the department must implement the decision.

(22) If a ((~~eustomer~~)) participant does not agree with the office of administrative hearings decision, the individual may

pursue civil action through superior court to review that decision.

(23) The department will not suspend, reduce, or terminate services to a ~~((customer))~~ participant while waiting for a formal hearing decision, unless the department believes the ~~((customer))~~ participant:

(a) Provided false information to obtain vocational rehabilitation services; or

(b) Committed fraud or other criminal action to obtain vocational rehabilitation services.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-590 Vocational rehabilitation—Case service records. The department shall maintain for each applicant or eligible individual a record of services that includes, to the extent pertinent, the following documentation:

~~(1) ((If an applicant has been determined ineligible:~~

~~(a) Documentation specifying reasons for the ineligibility determination; and~~

~~(b) Documentation of a review of the determination in twelve months after the determination was made, except as provided in WAC 67-25-056.~~

~~(2) When an applicant is determined eligible:))~~ When an applicant's eligibility has been determined:

(a) A written and dated statement of eligibility determination signed by the vocational rehabilitation counselor; and

(b) Supporting rationale for the determination, including documentation from the assessment for determining eligibility, in accordance with WAC ~~((67-25-020))~~ 67-25-130.

~~((3))~~ (2) If it is determined that a trial work experience ~~((or an extended evaluation))~~ for an individual with a significant disability is necessary to make an eligibility determination in accordance with WAC ~~((67-25-065 and 67-25-070))~~ 67-25-140:

(a) A written and dated statement of this determination signed by the vocational rehabilitation counselor;

(b) Supporting documentation, including the determination that the individual is an individual with a significant disability; and

(c) Documentation of periodic assessments in accordance with WAC ~~((67-25-065 and 67-25-070))~~ 67-25-140.

(3) If an applicant has been determined ineligible:

(a) Documentation specifying reasons for the ineligibility determination; and

(b) Documentation of a review of the determination in twelve months after the determination was made, except as provided in WAC 67-25-575 and 67-25-580.

(4) The individualized plan for employment for the ~~((customer))~~ participant in accordance with WAC ~~((67-25-260))~~ 67-25-230.

(5) Documentation from the assessment for determining vocational rehabilitation needs in accordance with WAC ~~((67-25-255 and 67-25-257))~~ 67-25-205 and 67-25-210 to support:

(a) The determination of the employment outcome and ~~((intermediate))~~ rehabilitation objectives for the individual; and

(b) The nature and scope of services needed to achieve the ~~((intermediate))~~ objectives and employment outcome.

(6) Documentation of how the ~~((customer))~~ participant was provided information necessary to make informed choices in selecting the competitive and integrated employment outcome, ~~((intermediate))~~ rehabilitation objectives, rehabilitation services, and providers of services identified in the individualized plan for employment.

~~(7) ((Documentation of how the customer was provided information regarding the level of integration of service provision and job placement options.~~

~~(8))~~ (8) If physical and mental restoration services were provided, in accordance with WAC ~~((67-25-384))~~ 67-25-310, documentation supporting the determination that the clinical status of the customer was stable or slowly progressive.

~~((9))~~ (8) Documentation supporting any decision to provide services to family members in accordance with WAC ~~((67-25-408))~~ 67-25-485.

~~((10))~~ (9) Documentation of the individual's participation in the cost of any vocational rehabilitation services.

~~((11))~~ (10) Documentation of the individual's eligibility for and use of any comparable services and benefits in accordance with WAC ~~((67-25-360))~~ 67-25-283.

~~((12))~~ (11) Documentation that the individual has been advised of the confidentiality of all personal information, and that any information about the individual has been released with the individual's informed written consent, in accordance with WAC ~~((67-25-550))~~ 67-25-051.

~~((13))~~ (12) Documentation of the reason for ~~((terminating))~~ exit from services ~~((to a customer)),~~ in accordance with WAC ~~((67-25-545))~~ 67-25-575 and 67-25-580, and, if the ~~((customer was determined rehabilitated))~~ participant was exited for having achieved a competitive and integrated employment outcome, the basis for that determination in accordance with WAC ~~((67-25-540))~~ 67-25-553.

~~((14))~~ (13) Documentation of any plans to provide post-employment services after the competitive and integrated employment outcome has been achieved, the basis on which these plans were developed, and a description of services provided and outcomes achieved in accordance with WAC ~~((67-25-444))~~ 67-25-450.

~~((15))~~ (14) Documentation concerning any action and decision resulting from a request for a fair hearing in accordance with WAC ~~((67-25-570))~~ 67-25-600.

~~((16))~~ (15) If a ~~((customer))~~ participant has been provided vocational rehabilitation services under an individualized plan for employment, but after the initiation of these services he or she has been determined no longer capable of achieving an employment outcome, documentation of any reviews of this determination in accordance with WAC ~~((67-25-056))~~ 67-25-220 and 67-25-575.

AMENDATORY SECTION (Amending WSR 08-19-068, filed 9/15/08, effective 10/16/08)

WAC 67-25-595 Assessment—Work skills ~~((assessment))~~. (1)(a) A work skills assessment is a process of providing assessment and related vocational rehabilitation services, after eligibility, to a ~~((customer))~~ participant with significant disabilities, for the purpose of collecting information

necessary to assess his or her capability to continue benefiting, in terms of ~~((an))~~ a competitive and integrated employment outcome, from vocational rehabilitation services due to the significance of his or her disability.

(b) The individualized plan for employment, developed in accordance with WAC ~~((67-25-260))~~ 67-25-230, must be inactivated while the ~~((individual))~~ participant is involved in the work skills assessment.

(2) A work skills assessment plan will be created by the VR counselor and the VR ~~((customer))~~ participant and include:

(a) Intermediate objectives that outline steps or activities that will determine what barriers are preventing the ~~((customer))~~ participant from making successful progress in their individual plan for employment;

(b) Responsibilities of the ~~((customer))~~ participant and VR counselor for the achievement of each individual objective;

(c) Methods for evaluating progress;

(d) Vocational services which support the achievement of each intermediate objective;

(e) Timelines for the overall work skills assessment plan and each service;

(f) Cost for each service with consideration of comparable benefits per WAC 67-25-283;

(g) Comments from the ~~((customer))~~ participant regarding the objectives, services and service providers;

(h) A statement that the individualized plan for employment can be amended at any time during the life of the individualized plan for employment; and

(i) Signatures of both the ~~((customer))~~ participant and VR counselor. The signature date ~~((shall))~~ will reflect the date the work skills assessment plan is signed.

(3) A work skills assessment may take place more than once and may extend as long as necessary to determine that:

(a) There is sufficient evidence that the ~~((customer))~~ participant can benefit from vocational rehabilitation services and achieve ~~((an))~~ a competitive and integrated employment outcome and is to continue to receive vocational rehabilitation services; or

(b) There is ~~((sufficient))~~ clear and convincing evidence based on functional and situational assessments that the ~~((customer))~~ participant cannot benefit from vocational rehabilitation services and achieve ~~((an))~~ a competitive and integrated employment outcome, due to the significance of his or her disability, and is no longer eligible for vocational rehabilitation services, and the case is closed in accordance with WAC 67-25-575 and 67-25-593.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
67-25-005	67-25-009
67-25-010	67-25-093
67-25-015	67-25-103
67-25-020	67-25-130

Old WAC Number	New WAC Number
67-25-025	67-25-115
67-25-030	67-25-125
67-25-050	67-25-160
67-25-056	67-25-575
67-25-060	67-25-183
67-25-065	67-25-140
67-25-255	67-25-205
67-25-257	67-25-210
67-25-260	67-25-230
67-25-270	67-25-240
67-25-275	67-25-250
67-25-284	67-25-580
67-25-350	67-25-265
67-25-360	67-25-283
67-25-380	67-25-273
67-25-384	67-25-310
67-25-388	67-25-320
67-25-390	67-25-330
67-25-394	67-25-340
67-25-396	67-25-355
67-25-398	67-25-365
67-25-399	67-25-305
67-25-400	67-25-370
67-25-404	67-25-383
67-25-408	67-25-485
67-25-412	67-25-393
67-25-416	67-25-403
67-25-418	67-25-410
67-25-432	67-25-425
67-25-436	67-25-430
67-25-444	67-25-450
67-25-446	67-25-490
67-25-448	67-25-465
67-25-452	67-25-475
67-25-460	67-25-193
67-25-540	67-25-553
67-25-545	67-25-593
67-25-550	67-25-051
67-25-570	67-25-600
67-25-590	67-25-073
67-25-595	67-25-220

REPEALER

Rules Coordinator

The following sections of the Washington Administrative Code are repealed:

- WAC 67-25-055 Eligibility determination—Notice to applicant.
- WAC 67-25-070 Extended evaluation.
- WAC 67-25-077 Certification of trial work experience or extended evaluation.
- WAC 67-25-280 Individualized plan for employment—Termination due to ineligibility.
- WAC 67-25-325 Services available from other agencies.

WSR 18-14-102**PERMANENT RULES
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Behavioral Health Administration)

[Filed July 3, 2018, 11:52 a.m., effective August 3, 2018]

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

Purpose: The department is repealing chapter 388-877B WAC, Substance use disorder, detoxification services. The legislature passed 2ESHB 1388, transferring portions of the responsibility for behavioral health to the department of health and portions to the health care authority effective July 1, 2018. The rules in this chapter will be rewritten under the department of health and the health care authority, therefore no longer needed by the department of social and health services (DSHS). Effective July 1, 2018, DSHS no longer has the authority to oversee this program.

Citation of Rules Affected by this Order: Repealing chapter 388-877B WAC.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035, and 71.34.380.

Other Authority: Chapter 201, Laws of 2018.

Adopted under notice filed as WSR 18-10-093 on May 1, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 3, 2018.

Katherine I. Vasquez

REPEALER

The following chapter of the Washington Administrative Code is repealed effective July 3, 2018:

- Chapter 388-877B WAC Substance use disorder services.

WSR 18-14-103**PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed July 3, 2018, 12:31 p.m., effective August 3, 2018]

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

Purpose: WAC 392-140-973 provides a time frame for calculating student poverty data to determine eligibility for National Board for Professional Teaching Standards bonuses for instructional assignments in challenging, high poverty schools. This rule-making order amends WAC 392-140-973 to align the time frame with other school apportionment processes.

Citation of Rules Affected by this Order: Amending WAC 392-140-973.

Statutory Authority for Adoption: RCW 28A.150.290(1) and 28A.405.415.

Adopted under notice filed as WSR 18-11-018 on May 4, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 3, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 16-23-102, filed 11/17/16, effective 12/18/16)

WAC 392-140-973 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Eligibility. Staff that

are eligible for the bonus shall be limited to those meeting the following requirements:

(1) Hold current certification by the national board for professional teaching standards during the entire school year, unless otherwise specified in the state Biennial Operating Appropriations Act; and

(2) Who are:

(a) Teachers and other certificated instructional staff employed full time or part time under written contract by Washington public school districts or educational service districts pursuant to RCW 28A.405.210;

(b) Teachers and other certificated instructional staff employed full time or part time by a contractor pursuant to WAC 392-121-188 and 392-121-206 (2)(a);

(c) Teachers and other certificated instructional staff employed full time or part time by the Washington school for the deaf or Washington school for the blind; or

(d) Teachers and other certificated instructional staff employed full time or part time by a charter school.

(3) In addition to bonuses provided by subsection (2) of this section, teachers and other certificated instructional staff shall be eligible for additional bonuses if in an instructional assignment in challenging, high poverty schools, subject to the following conditions and limitations:

(a) Challenging, high poverty schools are schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:

(i) 70 percent for elementary schools;

(ii) 60 percent for middle schools; or

(iii) 50 percent for high schools; as determined by the October 1st count of the comprehensive education data and research system (CEDARS) or successor data collection and reporting systems, of the office of superintendent of public instruction, on ~~((May 1st))~~ March 31st of that prior year: Provided, That schools operating during the current school year as their first year may qualify as challenging, high poverty schools based upon current year data, as determined by the October 1st count on ~~((May 1st))~~ March 31st of the current year.

(b) For purposes of the national board challenging, high poverty schools bonus, a school shall be categorized based upon the highest grade served as follows:

(i) A school whose highest grade served is 6th grade or lower shall be considered an elementary school;

(ii) A school whose highest grade served is either 7th, 8th, or 9th grade shall be considered a middle school;

(iii) A school whose highest grade served is either 10th, 11th, or 12th grade shall be considered a high school.

(c) A school shall be considered only if it serves thirty or more students, or is the largest school in the district serving its designated category.

(d) Schools that provide institutional education programs pursuant to WAC 392-122-205 shall be designated as challenging, high poverty schools with the student headcount enrollment eligible for the federal free or reduced price lunch program at one hundred percent and shall not be subject to the requirement in this subsection of serving thirty or more students.

(e) The student enrollment data used shall include the state-funded students in kindergarten through twelfth grade, plus prekindergarten students in special education.

(f) Teachers and other certificated instructional staff that meet the qualifications for the challenging, high poverty schools bonus under this subsection who are assigned for less than one full school year or less than full time for the school year shall receive the challenging, high poverty schools bonus in a prorated manner, subject to the following conditions and limitations:

(i) The portion of the employee's assignment to challenging, high poverty schools shall be determined as of June 15th of the school year.

(ii) If the employee's assignment to challenging, high poverty schools is less than 1.0 full-time equivalent, the proration shall use the methodology in WAC 392-121-212 and shall be rounded to three decimal places.

WSR 18-14-108

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed July 5, 2018, 9:25 a.m., effective August 5, 2018]

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

Purpose: The department is amending WAC 388-833-0015 in order to clarify the age limit for community crisis stabilization services program eligibility and replace the name of the DSHS children's administration with its new name, the department of children, youth, and families.

Citation of Rules Affected by this Order: Amending WAC 388-833-0015.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.20.010.

Adopted under notice filed as WSR 18-11-118 on May 22, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 5, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-08-081, filed 3/31/15, effective 5/1/15)

WAC 388-833-0015 Who is eligible for the community crisis stabilization service (CCSS) program? ~~((To be))~~ A person is eligible for ((CCSS;)) the ((following conditions must be met)) community crisis stabilization services program if:

- (1) ~~The ((individual has been determined))~~ person is eligible for DDA services ((as defined in)) under chapter 388-823 WAC;
- (2) ~~The ((individual))~~ person is eligible for medicaid services;
- (3) ~~The ((individual))~~ person or their legal representative ((has provided voluntary)) voluntarily consents to ((participate)) community crisis stabilization services;
- (4) ~~The ((individual))~~ person is age eight ((to)) or older but under age twenty one;
- (5) ~~The ((individual))~~ person has no ((unresolved issues)) pending investigations of abuse or neglect ((pending)) with the ((DSHS children's administration)) department of children, youth, and families; and
- (6) ~~((The)) DDA ((CCSS review team has determined that))~~ determines the ((individual)) person needs the level of service provided in the ((CCSS)) community crisis stabilization services program.

WSR 18-14-115
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 5, 2018, 11:00 a.m., effective August 5, 2018]

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

Purpose: The department is repealing WAC 388-14A-4600 through 388-14A-4620, which authorize the division of child support (DCS) most wanted web site. DCS is repealing these rules because DCS has stopped using that web site as a tool to locate parents. The individual rules to be repealed include WAC 388-14A-4600 What is the division of child support's DCS most wanted internet site?, 388-14A-4605 Whose picture can go on the division of child support's DCS most wanted internet site?, 388-14A-4610 How does a non-custodial parent avoid being posted on the DCS most wanted internet site?, 388-14A-4615 When does DCS remove a non-custodial parent from the DCS most wanted internet site?, and 388-14A-4620 What information does the division of child support post to the DCS most wanted internet site?

Citation of Rules Affected by this Order: Repealing WAC 388-14A-4600, 388-14A-4605, 388-14A-4610, 388-14A-4615, and 388-14A-4620.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: DCS is using the expedited rule-making process authorized under RCW 34.05.353 (2)(c) because the rules are no longer necessary due to this change of circumstances.

Adopted under notice filed as WSR 18-10-078 on May 1, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 5.

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

Date Adopted: July 5, 2018.

Katherine I. Vasquez
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-14A-4600 What is the division of child support's DCS most wanted internet site?
- WAC 388-14A-4605 Whose picture can go on the division of child support's DCS most wanted internet site?
- WAC 388-14A-4610 How does a noncustodial parent avoid being posted on the DCS most wanted internet site?
- WAC 388-14A-4615 When does DCS remove a noncustodial parent from the DCS most wanted internet site?
- WAC 388-14A-4620 What information does the division of child support post to the DCS most wanted internet site?