

**WSR 19-01-023**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**

[Filed December 10, 2018, 10:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-21-050.

Title of Rule and Other Identifying Information: Amended WAC 110-90-0020 What is the purpose of the extended foster care program?, 110-90-0040 Who is eligible for tended foster care, 110-90-0110 How does a youth agree to participate in the extended foster care program?, and 110-90-0140 If an extended foster care participant loses his or her eligibility before he or she turns twenty-one, may he or she reapply for extended foster care?; and repealing WAC 110-90-0030 What is extended foster care?, 110-90-0041 When is a youth considered to be in "foster care"?, and 110-90-0042 When is a youth not "in foster care"?

Hearing Location(s): On January 24, 2019, at 1:00 p.m., at 1110 Jefferson Street S.E., St. Helens Conference Room, Olympia, WA.

Date of Intended Adoption: January 30, 2019.

Submit Written Comments to: Department of Children, Youth, and Families (DCYF), Rules Coordinator, P.O. Box 40975, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), fax 360-902-7903, by January 24, 2019. Submit comments online at <https://del.wa.gov/PolicyProposalComment/Detail.aspx>.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, fax 360-902-7903, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), by January 21, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes proposed under this filing align extended foster care rules with recent legislative changes to program eligibility requirements, repeal a duplicative section, and make technical changes necessary after the decodification of sections from Title 388 WAC and recodification to Title 110 WAC.

Reasons Supporting Proposal: The extended foster care program supports eligible young adults between the ages of eighteen and twenty-one in a successful transition to independence. Rule changes are necessary to comply with changes in state law.

Statutory Authority for Adoption: RCW 74.13.031.

Statute Being Implemented: RCW 13.34.267, 13.34.268, 74.13.031, and 74.13.336.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Sherrie Flores, DCYF, Olympia, Washington, 360-902-8332; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies required to comply with RCW 34.05.328 (5)(a)(i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

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

December 10, 2018

Brenda Villarreal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0020 What is the purpose of the extended foster care program?** The extended foster care program provides an opportunity for young adults (~~in foster care~~) who are dependent at age eighteen to voluntarily agree to continue receiving foster care services, including placement services, while the youth:

- (1) Completes a high school or a high school equivalency program;
- (2) Completes a secondary or post-secondary academic or vocational program;
- (3) Participates in a program or activity designed to promote employment or remove barriers to employment;
- (4) Is engaged in employment for eighty hours or more per month; or
- (5) Is unable to engage in subsections (1) through (4) of this section due to a documented medical condition.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0040 Who is eligible for extended foster care?** (1) To be eligible for the extended foster care program, a youth, on his or her eighteenth birthday must be dependent under chapter 13.34 RCW (~~placed in foster care as defined in WAC 388-25-0508 by CA~~) and:

- (a) Enrolled in school as described in WAC (~~388-25-0512~~) 110-90-0050;
- (b) Have applied for, or can demonstrate intent to timely enroll in a post-secondary academic or vocational education program as described in WAC (~~388-25-0514~~) 110-90-0060;
- (c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC (~~388-25-0515~~) 110-90-0070;
- (d) Engaged in employment for eighty hours or more per month;
- (e) Unable to engage in subsection (1)(a) through (d) of this section due a documented medical condition as described in WAC (~~388-25-0519~~) 110-90-0100; or
- (f) Did not enroll in the extended foster care program; and
  - (i) Had their dependency dismissed on their eighteenth birthday;
  - (ii) Is requesting to enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of (~~nineteen~~) twenty-one; and
  - (iii) Meets one of the criteria found in subsection (1)(a) through (e) of this section.

(2) A youth is not eligible to enroll in extended foster care while in the care and custody of juvenile rehabilitation, county detention, or in the department of corrections. Youth meeting EFC eligibility in subsection (1)(a) through (e) of this section may enroll when they are released from juvenile rehabilitation, county detention, or department of corrections custody.

(3) If the youth was in the extended foster care program but then unenrolled or lost their eligibility, the youth may reenroll in the extended foster care program through a VPA (~~one time~~) before the age of twenty-one. The youth must meet one of the criteria in subsection (1)(a) through (e) when requesting to reenroll in the extended foster care program.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0110 How does a youth agree to participate in the extended foster care program?** (1) An eligible dependent youth can agree to participate by:

- (a) Signing an extended foster care agreement; or
- (b) For developmentally disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth who did not elect to participate in the program on their eighteenth birthday can agree to participate by:

- (a) Signing a voluntary placement agreement (VPA) before reaching age (~~nineteen~~) twenty-one; or
- (b) Establishing a nonminor dependency before reaching age (~~nineteen~~) twenty-one if the department denied entry into the program.

(3) An eligible (~~nondependent~~) nonminor dependent youth requesting to reenter the program may agree to participate by signing a VPA prior to reaching age twenty-one (~~as long as the youth has not previously entered into a VPA for extended foster care services~~).

(4) In order to continue receiving extended foster care services after entering into a VPA with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a VPA.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-90-0140 If an extended foster care participant loses his or her eligibility before he or she turns twenty-one, may he or she reapply for extended foster care?** (~~(+)~~) Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as the youth:

- ~~((a))~~ (1) Has not turned twenty-one; and
- ~~((b))~~ (2) Meets one of the conditions for eligibility in WAC (~~388-25-0506~~) 110-90-0040 (1)(a) through (e) (~~and~~
- ~~(c) Has not entered into a prior voluntary placement agreement with the department for the purposes of participating in the extended foster care program.~~

(2) Youth may reenter the extended foster care program ~~one time between the ages of eighteen to twenty-one~~).

## REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 110-90-0030 What is extended foster care?

WAC 110-90-0041 When is a youth considered to be "in foster care"?

WAC 110-90-0042 When is a youth not "in foster care"?

## WSR 19-01-033

### PROPOSED RULES

### DEPARTMENT OF TRANSPORTATION

[Filed December 12, 2018, 10:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-19-014.

Title of Rule and Other Identifying Information: Chapter 468-603 WAC, Agreements with municipalities and regional transit authorities at state-owned park and ride lots.

Hearing Location(s): On January 28, 2019, at 9:30 a.m., at the Nisqually Conference Room, Washington State Department of Transportation (WSDOT), Headquarters, Olympia.

Date of Intended Adoption: January 28, 2019.

Submit Written Comments to: Zachary Howard, email [howardz@wsdot.wa.gov](mailto:howardz@wsdot.wa.gov), by January 24, 2019.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, email [EngleKa@wsdot.wa.gov](mailto:EngleKa@wsdot.wa.gov), by January 24, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At state-owned park and ride lots where utilization is very high, overcrowding can lead to commuters parking in travel or fire lanes, parking on local streets, and circling the lots and local streets looking for parking. In addition, overcrowded lots can lead to crush-loaded buses and trains and exacerbate congestion on adjacent highway corridors.

By managing demand for these lots, municipalities (such as city and county transit agencies) can increase the likelihood that parking will be available for those who need it most, improve the commuter experience, and encourage a more efficient use of highway corridors.

This proposal provides administrative support for municipalities that operate and maintain state-owned park and ride lots by allowing their agreements with the department to include parking demand management strategies that are consistent with state and local laws.

Reasons Supporting Proposal: WSDOT's municipal partners requested this rule to improve the efficiency of state-owned park and ride lots that they operate and maintain. Previous practices encouraged commuters to shift to earlier arrival times, causing a misalignment between peak-hour commuting on congested highway corridors.

Statutory Authority for Adoption: RCW 46.61.577.

Statute Being Implemented: RCW 47.01.330(2).

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

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting: Zachary Howard, Seattle, Washington, 206-464-1253; Implementation and Enforcement: Dylan Counts, Seattle, Washington, 206-464-1232.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule does not apply to any agency listed in RCW 34.05.328 (5)(a)(i). The rule pertains to agreements between government agencies, and is not subject to violation by a nongovernment party.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule clarifies allowable agreements between the department and transit agencies which operate state-owned park and ride lots; the rule only directly affects public entities. Any impact on business would be tangential and minor.

December 12, 2018  
Kara Larson, Director  
Risk Management  
and Legal Services

### Chapter 468-603 WAC

#### AGREEMENTS WITH MUNICIPALITIES AND REGIONAL TRANSIT AUTHORITIES—STATE-OWNED PARK AND RIDE LOTS

##### NEW SECTION

**WAC 468-603-010 Agreements with municipalities and regional transit authorities at state-owned park and ride lots.** Washington state department of transportation may enter into agreements with municipalities as defined in RCW 35.95.020 and with regional transit authorities authorized under chapter 81.112 RCW allowing them to operate and maintain park and ride lots under the jurisdiction of the department. Provided, that nothing in this section shall be construed as expanding or limiting the powers or authority of any entity entering into an agreement covered by this section.

These agreements may include those parking management elements which the municipalities and regional transit authorities are authorized by law to implement and manage including, but not limited to:

(1) The issuing of permits such as high occupancy vehicle permits or permits designating a time of arrival. Such permits shall be issued at no cost unless allowed by state and local law;

(2) The reservation of a portion of stalls for the exclusive or time-specific use of permitted vehicles;

(3) The enforcement against unauthorized uses through impoundment, ticketing, or other measures as governed by applicable state and local laws and regulations. Enforcement

measures may also include the establishment of parking time limit maximums consistent with RCW 46.55.070; or

(4) The temporary closure of underutilized sections of park and ride facilities to reduce maintenance and operation costs.

For the purposes of this chapter, a "permit" is defined as any document or electronic record approved by and/or issued by a municipality or regional transit authority that when properly displayed or implemented by the permittee authorizes a vehicle to park.

### WSR 19-01-034

#### PROPOSED RULES

#### DEPARTMENT OF

#### CHILDREN, YOUTH, AND FAMILIES

[Filed December 12, 2018, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-09-120.

Title of Rule and Other Identifying Information: New chapter 110-300D WAC, Outdoor preschool pilot project, WAC 110-300D-0001 Authority, 110-300D-0005 Findings and intent, 110-300D-0010 Definitions, 110-300D-0015 Pilot project licenses—Licensing rules, 110-300D-0020 Denial, modification, suspension, and revocation of a pilot project license—Right of review, and 110-300D-0025 Process of seeking review.

Hearing Location(s): On January 24, 2019, at 1:00 p.m., at 1110 Jefferson Street S.E., St. Helens Conference Room, Olympia, WA.

Date of Intended Adoption: January 30, 2019.

Submit Written Comments to: Department of Children, Youth, and Families (DCYF), Rules Coordinator, P.O. Box 40975, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), fax 360-902-7903, by January 24, 2019. Submit comments online at <https://del.wa.gov/PolicyProposalComment/Detail.aspx>.

Assistance for Persons with Disabilities: Contact DCYF Rules Coordinator, phone 360-902-7956, fax 360-902-7903, email [dcyfrulescoordinator@dcyf.wa.gov](mailto:dcyfrulescoordinator@dcyf.wa.gov) [[dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov)], by January 21, 2018 [2019].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules establish (1) how to apply to participate in an outdoor preschool pilot, (2) the criteria the department will consider when reviewing applications and selecting pilot participants, and (3) the minimum terms and conditions applicants must agree to in order to participate in the pilot. The proposed rules also establish what constitutes enforcement actions for pilot participants and clarify their appeal rights.

Reasons Supporting Proposal: The department is implementing a legislatively mandated pilot project to explore the possibility of licensing outdoor preschools. The proposed rules establish an application and selection process that promotes consistent fair treatment for applicants. Additionally, the department must actively protect the health and safety of children enrolled in regulated programs and the proposed rules ensure that pilot participants are completing back-

ground checks and adhering to health and safety requirements the department determines are necessary for the pilot. Finally, the department is the lead agency that administers the federal child care development fund for the state of Washington and must ensure that pilot participants comply with federal requirements if they enroll children who participate in the working connections child care program.

Statutory Authority for Adoption: RCW 43.216.055, 43.216.065 and 43.216.740; chapter 43.216 RCW.

Statute Being Implemented: RCW 43.216.740.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Debbie Groff, Tri-Cities, 509-380-4247; Implementation and Enforcement: DCYF, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). DCYF does not voluntarily make that section applicable to the adoption of the proposed rules.

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

Small Business Economic Impact Statement

**SECTION [SECTION] 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

RCW 43.216.740 requires DCYF to establish a four year pilot project to license "outdoor nature-based early learning and child care programs" (outdoor preschools). As provided

Table A:

NAICS Code (4,5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
624410	child day care services*	40**	\$1,548***	937.9591562****

\* The NAICS category for child day care services is believed to be for traditional, indoor care offered in child care centers and family home[s]. There is no NAICS category specific to outdoor programs as defined under RCW 43.216.740.

\*\* According to notes of RCW 43.216.740, the legislature estimated that there were more than forty outdoor nature-based early learning and child care programs in Washington as of July 2017. However, there are currently only ten such programs participating as "implementers" of the outdoor preschool pilot project. Implementers, like all participants, must comply with the proposed requires [requirements] of chapter 110-300D WAC. Additionally, implementers are the subset of pilot project participants who contractually agree to adhere to the agreement and standards throughout the project.

\*\*\* These costs are derived from the NAICS category of child day care service and are thus a comparable estimate. At this time, these numbers cannot be provided specifically for outdoor preschools operating in Washington state or for outdoor preschools participating as implementers in the pilot project.

**SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

Proposed chapter 110-300D WAC, through the use of the agreement and standards, requires outdoor preschool pilot

in RCW 43.216.740, the pilot began on August 31, 2017, and ends June 30, 2021.

Proposed chapter 170-300D [110-300D] WAC will establish procedural requirements for participating in the pilot. These proposed rules reference a separate document that outdoor preschool pilot participants must sign in order to participate in the pilot project, the outdoor classroom agreement (agreement). One stipulation of this agreement is that outdoor preschools must adhere to the programmatic, health, and safety standards set out in another document, the touchstone standards (standards). These standards can be found on the DCYF web site at [https://www.dcyf.wa.gov/sites/default/files/pdf/outdoor\\_preschool\\_pilot\\_standards.pdf](https://www.dcyf.wa.gov/sites/default/files/pdf/outdoor_preschool_pilot_standards.pdf). WAC 110-300D-0100 of these standards requires all participating outdoor preschool provider position types, licensees, directors, assistant directors, program supervisors, lead teachers, assistant teachers, instructional aides, aides, and volunteers, to obtain certain professional credentials. To comply with this section, an outdoor preschool program and its employees must achieve or complete each requirement listed under the applicable subsection prior to assuming the responsibilities of that position. Subsections include qualifications such as age limits, educational achievements, time commitments, training requirements, creating a program curriculum, ensuring staff-to-child ratios are met, and more. WAC 110-300D-0106 of the standards requires only those staff at programs that are located more than thirty minutes from emergency medical care to obtain a wilderness first aid certificate. This certificate is in lieu of the regular first aid certificate. Additionally, operating standards require pilot participants to provide meals and snacks for children in attendance who do not bring their own food as well as comply with safety requirements.

**SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

project participants to be of a certain age, achieve educational requirements, meet regulatory standards (such as developing a program curriculum or adhering to staff-to-child ratios), complete training, perform duties applicable to their role, etc. For the most part, the requirements of this section do not have a cost associated with them because they are duties a provider must perform such as providing support to staff, setting educational goals, having a certain number of years' experience

in a child care setting, etc. However, the requirements to obtain educational certificates do impose new costs on provider roles that did not have these requirements before. Under proposed chapter 110-300D WAC, the agreement, and the standards; the roles below require the following early childhood education (ECE) or other certifications:

Outdoor preschool implementing programs:

- Directors - ECE State Certificate
- Assistant Directors - ECE State Certificate
- Program Supervisors - ECE State Certificate
- Lead Teachers - ECE Short Certificate
- Assistant Teachers - ECE Initial Certificate

The estimated cost to complete each certification without any prerequisite courses is as follows:

- ECE State Certificate = \$8,648
- ECE Short Certificate = \$3,680
- ECE Initial Certificate = \$2,208

The estimated cost for preservice screening of all providers:

- Tuberculosis Screening = \$55
- Comprehensive Background Check = \$68

Child care basics training is required in WAC 110-300D-0106 of the standards and must be completed by all outdoor preschool staff. Child care basics is a series of training modules that cover recognizing and reporting child abuse, emergency preparedness, serving children experiencing homelessness, child restraint procedures, and medication management.

- Child Care Basics = \$250

Additional training requirements are first aid, blood-borne pathogens, and CPR and outdoor preschool staff who will serve food must obtain a food worker card. Probable cost of these trainings:

- First Aid, CPR, and Bloodborne Pathogens = \$120
- Food Worker = \$10

The estimated cost to obtain a certificate that may be specific to outdoor preschools located thirty minutes from emergency medical services:

- Wilderness First Aid = \$235

Lastly, if an outdoor preschool elects to engage in developmentally appropriate water activities in bodies of water more than twenty-four inches deep, there will have to be a lifeguard present. Outdoor preschools may elect to have a staff member be the lifeguard. The estimated cost of lifeguard training is \$239.

Additionally, proposed chapter 110-300D WAC, through the use of the agreement and standards, requires outdoor preschool pilot project participants to provide meals and snacks to children in care, unless the children bring their food. USDA child care meal and snack rates per child are:

- Breakfast, \$1.31
- Lunch and supper, \$2.46
- Snack, 73¢

Finally, there are safety standards to keep children within the preschool boundaries, outfitted with weather appropriate clothing, and to keep a first aid kit on premises and replenish the contents as they are used. Pilot participants must purchase a \$30 first aid kit and replenish the contents as needed and traffic cones at an approximate cost of \$12 each to establish program boundaries. The cost for weather appropriate clothing varies widely since programs receive donations and purchase used clothing. Some parents and families provide extra clothes for their own child.

**SECTION 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry.**

The cost to complete certification requirements are available online, typically through a college of learning program's web site. This statement assumes an implementer is required to complete a new certification under proposed chapter 110-300D WAC, the agreement, and the standards without having completed any prerequisite courses. Costs are estimated based on completing each certificate from the starting point. Accordingly, even the least expensive certificate (\$2,208) costs more than both the minor-cost threshold based on payroll (\$1,548) and the minor-cost threshold based on receipts (\$938) for the child care/early learning industry in Washington state.

If an outdoor preschool implementer program elects to cover the cost for providers already working in the program, or those promoted from one role to another within the program, the proposed rule would impose more-than-minor costs. The cost would also depend on how many providers working for an implementer would be required to complete new certifications. Alternatively, if a program elects not to cover the cost for a provider to complete applicable certifications, proposed chapter 110-300D WAC, the agreement and the standards would not impose any cost on the program.

**SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule. Use one or more of the following as a basis for comparing costs:**

- Cost per employee
- Cost per hour of labor
- Cost per \$100 of sales

Proposed chapter 110-300D WAC, the agreement and the standards only impact small businesses. There are no large businesses that operate as outdoor preschools in Washington state.

**SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced, provide a clear explanation of why.**

Education Requirements: The proposed rules are expressly for administering the pilot described in section 1. For implementers who do not meet the education requirements, DCYF has established equivalencies that will satisfy the education requirements. Equivalencies are department-

recognized alternative credentials or demonstrated competency (skills and experience).

Meals: DCYF is allowing parents and families to provide their child's food. If any pilot participant supplies food, it is limited to a snack. When the pilot ends on June 30, 2018, DCYF will assess the feasibility of licensing outdoor preschools. If licensing occurs, DCYF will determine if chapter 110-300 WAC, Foundational quality standards for early learning programs, is sufficient for licensing these programs or if it must engage in rule making.

**SECTION 7: Describe how small businesses were involved in the development of the proposed rule.**

RCW 43.216.740 requires that DCYF convene an advisory group of outdoor nature-based early learning practitioners. In August 2017, DCYF and stakeholders in the outdoor preschool industry formed the outdoor preschool advisory group (OPAG) and began meeting regularly. From January - July 2018, OPAG met monthly via webinar or in-person meeting to discuss and develop the proposed standards, and all OPAG members were encouraged to work with their communities to provide feedback via survey, as well.

**SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

None. Participation in the pilot is voluntary and DCYF has establish[ed] equivalencies of training, skills, and experience for staff members of the participating preschools who do not meet the education requirement.

A copy of the statement may be obtained by contacting DCYF Rules Coordinator, P.O. Box 40975, phone 360-902-7956, fax 360-902-7903, email dcyf.rulescoordinator@dcyf.wa.gov.

December 12, 2018

Brenda Villarreal

Rules Coordinator

**Chapter 110-300D WAC**

**OUTDOOR PRESCHOOL PILOT PROJECT**

NEW SECTION

**WAC 110-300D-0001 Authority.** (1) Chapter 43.216 RCW establishes the department of children, youth, and families' responsibility and authority to set and enforce licensing requirements and standards for licensed child care agencies in Washington state, including the authority to adopt rules to implement chapter 43.216 RCW.

(2) Under RCW 43.216.740(1), the department must establish a pilot project to license outdoor, nature-based early learning and child care programs (the "pilot project") to commence August 31, 2017, and conclude June 30, 2021.

(3) Pursuant to RCW 43.216.740(2), the department shall adopt rules to implement the pilot project and may waive or adapt licensing requirements when necessary to allow for the operation of outdoor preschools in Washington state.

NEW SECTION

**WAC 110-300D-0005 Findings and intent.** (1) Under section 1, chapter 162, Laws of 2017, the legislature made the following findings:

(a) Over the past decade, more than forty outdoor, nature-based early-learning and child care programs have opened in Washington, several of which are in high demand based on existing waitlists;

(b) These programs are currently unlicensed and unable to offer full-day programs, which many working families are seeking;

(c) Unlicensed outdoor programs are also unable to serve families who are eligible to receive assistance through the department's working connections child care program;

(d) The outdoor preschool model could help expand the number of high quality early learning opportunities available to families throughout Washington, particularly in areas where preschool-appropriate indoor space is unavailable or unaffordable;

(e) When early learning programs spend less on physical facilities, they are able to spend more on recruiting and retaining teachers and other early learning professionals; and

(f) Research on outdoor preschools operating in Scandinavian countries for decades has demonstrated a positive impact on children's development, including improved cognitive and social skills when children transition to grade school.

(2) Based on the findings described in this section the legislature declared its intent to establish a pilot project to license outdoor preschools in order to expand access to affordable, high quality early learning programs, and to further investigate the benefits of outdoor, nature-based classrooms for Washington's children and families.

(3) The data collected from the pilot project will be evaluated by the department to determine whether an outdoor preschool program in Washington can be implemented, consistent with the intent and purposes of chapter 43.216 RCW, to provide access to affordable, high quality early learning programs.

NEW SECTION

**WAC 110-300D-0010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Agency" shall have the same meaning as described in RCW 43.216.010.

"Department" or "DCYF" means the Washington state department of children, youth, and families.

"Early learning" shall have the same meaning as described in RCW 43.216.010.

"Outdoor, nature-based early learning and child care program," "outdoor classroom," or "outdoor preschool" means an agency-offered program operated primarily outdoors in which children are enrolled on a regular basis for three or more hours per day. For the purposes of this section "primarily" means that a participant must operate an outdoor classroom for more than fifty percent of program hours per day. Such programs may be offered as:

(a) An outdoor component of a licensed early learning program;

(b) A program operating entirely outdoors on private or public park land, with or without a permanently located outdoor classroom.

"Participants" refers to the entities operating nature-based early learning and child care programs licensed by the department to participate in the outdoor preschool pilot project.

#### NEW SECTION

**WAC 110-300D-0015 Pilot project licenses—Licensing rules.** (1) To participate in the outdoor, nature-based early learning and child care program pilot project, the applicant must apply to the department for and obtain a license to operate a pilot project.

(2) The department will select outdoor classroom sites after considering:

(a) The criteria described in RCW 43.216.740 (4) and (5);

(b) The characteristics of an applicant's outdoor classroom and whether those characteristics are a part of any existing licensed outdoor classroom; and

(c) The department's ability to monitor the applicant's outdoor classroom sites identified in the application.

(3) To protect the health and safety of children enrolled in outdoor classrooms, agency participants in this pilot project must agree, enter into, and comply with the terms and conditions of an outdoor classroom agreement prepared by the department. The outdoor classroom agreement shall require compliance with the following minimum terms and conditions:

(a) Compliance with the background check requirements contained in chapter 110-06 WAC;

(b) Compliance with the outdoor classroom agreement; and

(c) Compliance with the federal Child Care Development Fund (45 C.F.R. Part 98) requirements.

(4) Pursuant to RCW 34.05.310 (2)(b), the department will use this pilot project to test the feasibility of complying with or administering draft new rules or draft amendments to existing rules.

(5) To establish a uniform set of requirements for outdoor classrooms, the department may draft new rules or add amendments to existing rules; or add or amend current licensed child care rules under chapters 110-300, 110-300A, and 110-300B WAC.

#### NEW SECTION

**WAC 110-300D-0020 Denial, modification, suspension, and revocation of a pilot project license—Right of review.** (1) A license authorized to be issued under this chapter may be denied pursuant to chapter 43.216 RCW, this chapter, and chapter 110-06 WAC.

(2) A license issued under this chapter may be suspended, modified, or revoked if the licensee fails to comply with the requirements contained in chapter 43.216 RCW, this chapter, or chapter 110-06 WAC.

#### NEW SECTION

**WAC 110-300D-0025 Process of seeking review.** (1) Pursuant to RCW 43.216.250 and 43.216.325, the department is authorized to take enforcement action against an applicant or licensee if the licensee fails to comply with this chapter, chapter 110-06 WAC or chapter 43.216 RCW. For purposes of this chapter enforcement actions only include the denial, suspension, revocation, modification, or nonrenewal of a license to participate in the outdoor, nature-based early learning and child care program.

(2) An applicant or licensee has the right to appeal an enforcement action by requesting an adjudicative proceeding (or "hearing") pursuant to the hearing rules codified in chapter 170-03 WAC.

(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 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.

#### **WSR 19-01-042**

#### **WITHDRAWAL OF PROPOSED RULES WASHINGTON STATE PATROL**

[Filed December 13, 2018, 9:57 a.m.]

The Washington state patrol would like to withdraw the preproposal notice of intent [proposed rule making] filed as WSR 18-22-081 and 18-22-077 on November 2, 2018.

The agency will file a new CR-102 at a later date.

Kimberly Mathis  
Agency Rules Coordinator

#### **WSR 19-01-048**

#### **PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed December 13, 2018, 3:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-21-113.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-79A-005 Maximum amount of guardianship fees and related costs for a long-term care medicaid eligible client.

Hearing Location(s): On January 22, 2019, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than January 23, 2019.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., January 22, 2019.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 8, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department intended to create two classes of clients with guardians: Class (1), those who had the most recent guardianship-related court order signed before June 1, 2018; and class (2), those with the order signed on or after June 1, 2018. Language in WAC 388-79A-005 could be read to create a third class of clients with guardians, along with the intended two: Those who had their guardianship established prior to June 1, 2018, but had the most recent guardianship-related order signed on or after June 1, 2018. Under this reading, inconsistent with the rest of chapters 388-79A and 182-513 WAC, this third class of clients would have no enumerated limits on fees or costs under chapter 388-79A WAC, and therefore no deductions would be allowed under WAC 388-79A-015, RCW 11.92.180 and 43.20B.460.

The department intends to clarify that there is no third class, and that these clients fall under class (2), and therefore fee and cost deductions would be allowed under WAC 182-513-1530.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 43.20B.460, 11.92.180.

Statute Being Implemented: RCW 43.20B.460.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2271.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), rules of DSHS relating only to client medical or financial eligibility concerning liability of care of dependents.

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

Is exempt under RCW 34.05.328 (5)(b)(vii).

December 13, 2018  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-10-067, filed 4/30/18, effective 6/1/18)

**WAC 388-79A-005 Maximum amount of guardianship fees and related costs for a long-term care medicaid**

**eligible client.** (1) As mandated by RCW 43.20B.460 and in accordance with RCW 11.92.180, the maximum amount of guardianship fees and related costs must not exceed the limits of this section when the person under guardianship is:

(a) A medicaid eligible client, residing in:

(i) A medical institution, as defined under WAC 182-500-0050;

(ii) An alternate living facility (ALF), as defined under WAC 182-513-1100; or

(iii) An at-home setting; and

(b) Required under chapter 182-513 WAC or chapter 182-515 WAC to participate towards the cost of long-term care.

(2) The maximum amount of guardianship fees and related costs must not exceed the limits of (~~chapter 388-79A~~) WAC 388-79A-010 when:

(a) The most recent court order establishing or continuing a guardianship was entered before June 1, 2018; and

(b) The client under guardianship was receiving medicaid-funded long-term care before June 1, 2018.

(3) For all other clients not described under subsection (2) of this section, the maximum amount of guardianship fees and related costs must not exceed the limits under WAC 182-513-1530.

## WSR 19-01-060

### PROPOSED RULES

#### OFFICE OF

#### FINANCIAL MANAGEMENT

[Filed December 14, 2018, 11:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-21-114.

Title of Rule and Other Identifying Information: Amending WAC 82-75-030 Additional definitions authorized by chapter 43.371 RCW, a rule related to the statewide all-payer health care claims database (WA-APCD). Specifically, the rules will revise the definition of "Washington covered person" to correct an error that was made when amending the definition in spring 2018.

Hearing Location(s): On January 22, 2019, at 9:30 a.m., at 302 Sid Snyder Avenue S.W., Fourth Floor, Room 440, Olympia, WA 98501.

Date of Intended Adoption: January 31, 2019.

Submit Written Comments to: Thea Mounts, 106 11th Avenue S.W., P.O. Box 43124, Olympia, WA 98504, email apcd@ofm.wa.gov, by January 22, 2019.

Assistance for Persons with Disabilities: Contact office of financial management (OFM), phone 360-902-3092, TTY 360-753-4107, email hayden.mackley@ofm.wa.gov, by January 18, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The subject of this rule making relates to WA-APCD. WAC 82-75-030 provides additional definitions for terms used in the chapter that establishes and regulates WA-APCD. This rule making is to revise definitions that have been enacted and add definitions for



other terms that have not previously been defined in statute or rule.

Reasons Supporting Proposal: Chapter 43.371 RCW directs OFM to establish a WA-APCD to support transparent public reporting of health care information. To accomplish this requirement, OFM is directed to establish rules necessary to implement this chapter, and to establish rules that specifically define claim and data files that suppliers must submit. OFM enacted additional definitions in WAC 82-75-030 and has added definitions as needed. Based on stakeholder feedback and experience since the WA-APCD has been implemented, the definition of "Washington covered persons" was amended in spring 2018. An error was made in the drafting of that amendment. This rule making is to correct that error.

Statutory Authority for Adoption: RCW 43.371.010(3) and 43.371.070.

Statute Being Implemented: Chapter 43.371 RCW.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting: Roselyn Marcus, Insurance Building, Olympia, Washington, 360-902-0434; Implementation and Enforcement: Thea Mounts, Helen Sommers Building, Olympia, Washington, 360-902-0552.

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

A cost-benefit analysis is not required under RCW 34.05.328. OFM is not a listed agency in RCW 34.05.328 (5)(a)(i).

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

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

December 14, 2018

Roselyn Marcus

Assistant Director for

Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 18-19-056, filed 9/15/18, effective 10/16/18)

**WAC 82-75-030 Additional definitions authorized by chapter 43.371 RCW.** The following additional definitions apply throughout this chapter unless the context clearly indicates another meaning.

"Capitation payment" means a payment model where providers receive a payment on a per "covered person" basis, for specified calendar periods, for the coverage of specified health care services regardless of whether the patient obtains care. Capitation payments include, but are not limited to, global capitation arrangements that cover a comprehensive set of health care services, partial capitation arrangements for subsets of services, and care management payments.

"Claim" means a request or demand on a carrier, third-party administrator, or the state labor and industries program for payment of a benefit.

"Claimant" means a person who files a workers compensation claim with the Washington state department of labor and industries.

"Coinsurance" means the percentage or amount an enrolled member pays towards the cost of a covered service.

"Copayment" means the fixed dollar amount a member pays to a health care provider at the time a covered service is provided or the full cost of a service when that is less than the fixed dollar amount.

"Data management plan" or "DMP" means a formal document that outlines how a data requestor will handle the WA-APCD data to ensure privacy and security both during and after the project.

"Data policy committee" or "DPC" is the advisory committee required by RCW 43.371.020 (5)(h) to provide advice related to data policy development.

"Data release committee" or "DRC" is the advisory committee required by RCW 43.371.020 (5)(h) to establish a data release process and to provide advice regarding formal data release requests.

"Data submission guide" means the document that contains data submission requirements including, but not limited to, required fields, file layouts, file components, edit specifications, instructions and other technical specifications.

"Data use agreement" or "DUA" means the legally binding document signed by either the lead organization and the data requestor, or the office and the data requestor, or the office and a Washington state agency, that defines the terms and conditions under which access to and use of the WA-APCD data is authorized, how the data will be secured and protected, and how the data will be destroyed at the end of the agreement term.

"Days" means calendar days.

"Deductible" means the total dollar amount an enrolled member pays on an incurred claim toward the cost of specified covered services designated by the policy or plan over an established period of time before the carrier or third-party administrator makes any payments under an insurance policy or health benefit plan.

"Director" means the director of the office of financial management.

"Fee-for-service equivalent" means the amount that would have been paid by the payer for a specified service if the service had not been capitated or paid under an alternative payment formula like treatment episodes, or the fee amount reflected in the payer's internal fee schedule(s) for services that are not paid on a fee-for-service basis.

"Fee-for-service payment" means a payment model where providers receive a negotiated or payer-specified rate for a specific health care service provided to a patient.

"Health benefits plan" or "health plan" has the same meaning as in RCW 48.43.005.

"Health care" means care, services, or supplies related to the prevention, cure or treatment of illness, injury or disease of an individual, which includes medical, pharmaceutical or dental care. Health care includes, but is not limited to:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or men-

tal condition, or functional status, of an individual or that affects the structure or function of the body; and

(b) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

"Lead organization" means the entity selected by the office of financial management to coordinate and manage the database as provided in chapter 43.371 RCW.

"Malicious intent" means the person acted willfully or intentionally to cause harm, without legal justification.

"Member" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

"Office" means the Washington state office of financial management.

"Person" means an individual; group of individuals however organized; public or private corporation, including profit and nonprofit corporations; a partnership; joint venture; public and private institution of higher education; a state, local, and federal agency; and a local or tribal government.

"PFI" means the proprietary financial information as defined in RCW 43.371.010(12).

"PHI" means protected health information as defined in the Health Insurance Portability and Accountability Act (HIPAA). Incorporating this definition from HIPAA, does not, in any manner, intend or incorporate any other HIPAA rule not otherwise applicable to the WA-APCD.

"Subscriber" means the insured individual who pays the premium or whose employment makes him or her eligible for coverage under an insurance policy or member of a health benefit plan.

"WA-APCD" means the statewide all payer health care claims database authorized in chapter 43.371 RCW.

"WA-APCD program director" means the individual designated by the office as responsible for the oversight and management of the operations of the statewide all payer health care claims database authorized in chapter 43.371 RCW.

"Washington covered person" means any eligible member and all covered dependents where the covered person is a Washington state resident, ((and)) or the state of Washington has primary jurisdiction, and whose laws, rules and regulations govern the members' and dependents' insurance policy or health benefit plan.

**WSR 19-01-063**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)

[Filed December 14, 2018, 2:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-117.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-828-9310 How does DDA determine the number of community access ser-

vices hours you may receive each month?, 388-828-9330 How does DDA determine your employment status?, 388-828-9335 How does DDD determine your employment service level?, 388-828-9350 Are there conditions when DDA will authorize additional hours to your monthly employment service hours?, and 388-845-2100 What are supported employment services?

Hearing Location(s): On January 22, 2019, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than January 23, 2019.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. January 22, 2019.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by January 8, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments replace "community access" with "community inclusion" to align with changes to chapter 388-845 WAC, change employment status verbiage from "in training/job development" to "working at subminimum wage or in job development," and remove provider travel time as a reason for authorizing additional employment hours.

Reasons Supporting Proposal: Amendments to WAC 388-828-9335 and 388-845-2100 make changes requested by stakeholders. Removing provider travel time and replacing "community access" with "community inclusion" align with waiver amendments approved by CMS.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.120, 34.05.-330, 71A.12.040.

Rule is necessary because of federal law, 42 U.S.C. Section 1396n(c).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Branda Matson, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1522.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

December 13, 2018  
 Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

**WAC 388-828-9310 How does DDA determine the number of community ((~~access~~) inclusion services hours you may receive each month?** (1) The number of hours of community ((~~access~~) inclusion services you may receive each month is based on your community ((~~access~~) inclusion service level.

(2) The developmental disabilities administration (DDA) determines your community ((~~access~~) inclusion service level based on your support intensity scale (SIS) support needs index percentile ranking. DDA determines your SIS support needs index percentile ranking under WAC 388-828-4440 and as detailed in the following table:

SIS support needs index percentile	Community (( <del>access</del> ) <u>inclusion</u> service level	Maximum service hours per month
0 - 9th percentile	A	Up to 3 hours
10th - 19th percentile	B	Up to 6 hours
20th - 29th percentile	C	Up to 9 hours
30th - 44th percentile	D	Up to 12 hours
45th - 59th percentile	E	Up to 15 hours
60th - 74th percentile	F	Up to 18 hours
75th - 100th percentile	G	Up to 20 hours

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

**WAC 388-828-9330 How does DDA determine your employment status?** (1) The developmental disabilities administration (DDA) considers your employment status "working" if:

- (a) In the twelve months before your assessment:
  - (i) You have been employed for nine consecutive months; and
  - (ii) You have earned at least Washington state's minimum wage; or
- (b) You are currently self-employed and:
  - (i) The activities of your employment meet the Internal Revenue Service (IRS) rules for a business;
  - (ii) You have a business plan demonstrating feasibility as determined by the division of vocational rehabilitation or an impartial, agreed upon, third-party business expert; and
  - (iii) You are licensed, if required, and follow all local, state, and federal regulations and rules.

(2) DDA considers your employment status ((~~"in-training/job development"~~)) "working at sub-minimum wage or in job development" if you do not meet the conditions in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 13-01-076, filed 12/18/12, effective 1/18/13)

**WAC 388-828-9335 How does ((~~DDA~~) DDA determine your employment service level?** ((~~DDA~~) DDA determines your employment service level using the following table:

If your employment support level in WAC 388-828-9205 is:	And your employment status in WAC 388-828-9330 is:	Then your employment service level is:	And your employment service hours per month are:
None	Working	A	0
	(( <del>In-Training/Job-Development</del> )) <u>Working at sub-minimum wage or in job development</u>	B	0
Low	Working	C	4
	(( <del>In-Training/Job-Development</del> )) <u>Working at sub-minimum wage or in job development</u>	D	7
Medium	Working	E	7
	(( <del>In-Training/Job-Development</del> )) <u>Working at sub-minimum wage or in job development</u>	F	9
High	Working	G	11
	(( <del>In-Training/Job-Development</del> )) <u>Working at sub-minimum wage or in job development</u>	H	12

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

**WAC 388-828-9350 Are there conditions when DDA will authorize additional hours to your monthly employment service hours?** The developmental disabilities administration (DDA) may authorize additional hours to your monthly employment service hours when your employment support plan identifies a need for additional service hours related to:

- (1) Your work schedule;
- (2) The number of jobs you have;
- (3) The appropriateness of your job match;
- (4) Natural supports available to you on the job;
- (5) Health limitations that affect your job;

- (6) (~~Provider travel time and distance to your job;~~  
~~(7)) Behavioral or physical needs that may affect the safety of you and others while at work; or~~  
~~((8)) (7) Other factors in your employment plan that indicate a need for additional hours for a short-term volunteer opportunity, job development, or for you to maintain a job.~~

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

**WAC 388-845-2100 What are supported employment services?** (1) Supported employment services are for those interested in integrated gainful employment and should facilitate paid employment that is covered by the Washington State Minimum Wage Act under chapter 49.46 RCW and the Fair Labor Standards Act under 29 U.S.C. Section 201. These services provide you with intensive ongoing support if you need individualized assistance to gain employment, maintain employment, or both. These services are tailored to your individual needs, interests, abilities, and promote your career development. These services are provided in individual or group settings and are available in the basic plus, core, and community protection waivers.

(2) Individual supported employment services include activities needed to sustain Washington state's minimum wage pay or higher. These services are conducted in integrated business environments and include the following:

(a) Intake: An initial meeting to gather and share basic information and a general overview of employment supports, resources in the community, and the type of available supports that the individual may receive;

(b) Discovery: A person-centered approach to learn the individual's likes and dislikes, job preferences, and employment goals and skills;

(c) Job preparation: Includes activities of work readiness resume development, work experience, volunteer support transportation training;

(d) Marketing: A method to identify and negotiate jobs, build relationships with employers, and customize employment development;

(e) Job coaching: The supports needed to keep the job; and

(f) Job retention: The supports needed to keep the job, maintain a relationship with employer, identify opportunities, and negotiate a raise in pay, promotion, or increased benefits.

(3) Group supported employment services are a step on your pathway toward gainful employment in an integrated setting and include:

(a) Supports and paid training in an integrated business setting;

(b) Supervision by a qualified employment provider during working hours;

(c) Groupings of no more than eight workers with disabilities; and

(d) Individualized supports to obtain gainful employment.

**WSR 19-01-068**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed December 17, 2018, 8:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-06-042.

Title of Rule and Other Identifying Information: WAC 392-122-605 Apportionment of state moneys for state learning assistance program, 392-140-915 High poverty funding—Process and definition of eligible schools, 392-140-916 K-3 class size funding, 392-140-923 K-3 class size—Enrollment, 392-140-932 K-3 class size—Teachers, 392-140-934 K-3 class size—Supplemental FTE teachers, 392-140-936 K-3 demonstrated class size—High poverty schools, 392-140-939 K-3 demonstrated class size—Nonhigh poverty schools, 392-140-942 Weighted average class size—High poverty schools, 392-140-945 Weighted average class size—Non-high poverty schools.

Hearing Location(s): On January 29, 2019, at 1:00 p.m., at the Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 South Washington Street, Brouillet Conference Room, Olympia, WA 98501. Hearing will begin at 1:00 p.m., those planning to testify should arrive by 1:00 p.m.

Date of Intended Adoption: February 1, 2019.

Submit Written Comments to: Becky McLean, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email becky.mclean@k12.wa.us, fax 360-664-3683, by January 29, 2019.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by January 22, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules modify OSPI's processes related to the apportionment of state funding to high poverty schools. First, the proposal would amend the process OSPI uses to calculate the state learning assistance program (LAP) allocations under WAC 392-122-605 by specifying that LAP funding is calculated based on a school district's prior school year's October head-count enrollment for free and reduced price lunch as reported in CEDARS as of March 31 of the prior school year. Second, the proposed rule making is intended to clarify the process that OSPI uses to determine school district compliance with new K-3 class size requirements under the law. Third, the proposal aligns OSPI's K-3 class size rules in chapter 392-140 WAC with the 2017-19 biennial budget by striking language related to enhanced funding for K-3 high poverty schools.

Reasons Supporting Proposal: Without these WAC changes, districts, charter schools, and tribal compact schools will not receive the appropriate state funding per the biennial operating budget.

Statutory Authority for Adoption: RCW 28A.150.290 and 28A.155.075.

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

Name of Agency Personnel Responsible for Drafting: Becky McLean, OSPI, P.O. Box 47200, Olympia, WA 98504, 360-725-6306; Implementation: T. J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, 360-725-6301.

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

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

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

December 14, 2018  
Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

**AMENDATORY SECTION** (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

**WAC 392-122-605 Apportionment of state moneys for the state learning assistance program.** (1) State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due. The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, public charter school, or school operated pursuant to a state-tribe education compact if the school district, charter school, or compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

(2) Learning assistance program moneys include two allocations: A district learning assistance program base allocation and a learning assistance program high-poverty based school allocation for eligible schools.

(a) A school district's funded students for the learning assistance program base allocation shall be the sum of the district's annual average full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior school year. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system as of March 31st of the prior school year.

(b)(i) A school is eligible for the learning assistance program high-poverty based school allocation if it is funded through the prototypical model and has at least fifty percent of its students eligible for free and reduced-price meals in the prior school year. The percentage is determined by the school's percentage of October headcount enrollment in

grades K-12 for free and reduced-price lunch ~~((The prior school year's October headcount enrollment for free and reduced-price lunch shall be))~~ as reported in the comprehensive education data and research system as of March 31st of the prior school year.

(ii) An eligible school's funded students for the learning assistance high-poverty based allocation shall be the sum of the school's annual average full-time enrollment in grades K-12 for the prior year.

**AMENDATORY SECTION** (Amending WSR 16-10-117, filed 5/4/16, effective 6/4/16)

**WAC 392-140-916 K-3 class size funding.** Elementary teacher allocations based on the prototypical schools formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for grades K-3 ~~((at nonhigh poverty and high poverty schools))~~ will be based upon budgeted K-3 enrollment ~~((at both nonhigh poverty and high poverty schools))~~ as stated in the ~~((district's))~~ F-203 revenue estimate from September through December for the year budgeted. Districts, charter schools, and tribal compact schools will also input their estimated K-3 ~~((and K-3 high poverty weighted average))~~ class size for purposes of funding from September through December. K-3 enrollment will not include student full-time equivalent (FTE) enrolled in alternative learning experience programs ~~((Funding based on actual average annual FTE enrollment reported in the P-223 will begin in January and will continue through August))~~ that meet the requirements of WAC 392-121-182. Funded class size starting with January apportionment will be based on the actual average annual FTE enrollment reported in the P-223. Districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of ~~((both K-3 and K-3 high poverty))~~ K-3 class size funding in order to generate the full allotment.

**AMENDATORY SECTION** (Amending WSR 16-10-117, filed 5/4/16, effective 6/4/16)

**WAC 392-140-923 K-3 class size compliance—Enrollment.** Grade level K-3 ~~((high poverty and nonhigh poverty enrollment from a district's P-223 reporting))~~ enrollment reported on the P-223 will be considered in the compliance calculations for the months of January, March, and June. All students in ALE programs that meet the requirements of WAC 392-121-182 will be excluded from the compliance calculation.

**AMENDATORY SECTION** (Amending WSR 16-10-117, filed 5/4/16, effective 6/4/16)

**WAC 392-140-932 K-3 class size compliance—Teachers.** The superintendent of public instruction shall include in the calculation of ~~((high poverty))~~ K-3 class size compliance those teachers reported on the S-275 ~~((at the eligible schools))~~ that are coded in programs 01 to grade group K, 1, 2, or 3, and are reported in one of the following duty roots:

- Duty Root 31 - Elementary homeroom teacher;

- Duty Root 33 - Other teacher;
- Duty Root 34 - Elementary specialist teacher;
- Duty Root 52 - Substitute teacher;
- Duty Root 63 - Contractor teacher.

S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

Program 21 special education teachers coded to grade K, 1, 2, or 3 multiplied by the annual percentage of students in special education instruction used in determination of a district's, tribal compact school's, or charter school's 3121 revenue will be included.

Teachers coded to program 02 alternative learning experience shall be excluded.

AMENDATORY SECTION (Amending WSR 16-10-117, filed 5/4/16, effective 6/4/16)

**WAC 392-140-934 K-3 class size compliance—Supplemental FTE teachers.** As used in this chapter, "supplemental full-time equivalent teachers" means the net change in full-time equivalent teachers after October 1st of the school year not reflected in report S-275. Teachers, for the purpose of this section, are defined in WAC 392-140-932. Supplemental full-time equivalent teachers are determined as follows:

(1) Determine the teacher FTE that would be reported for each employee for the school year on report S-275 if the current data were submitted for the October 1st snapshot as required in the S-275 instructions and subtract the teacher FTE as of October 1st actually reported for the employee on the ((~~school district's~~)) most current report S-275.

(2) Include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

Supplemental teacher FTE must be reported to the office of superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered. Supplemental teacher FTE must be reported by individual grade level K, 1, 2, and 3((~~as well as separately for nonhigh poverty and high poverty schools~~)).

AMENDATORY SECTION (Amending WSR 16-10-117, filed 5/4/16, effective 6/4/16)

**WAC 392-140-939 K-3 ((~~demonstrated~~)) funded class size((~~—Nonhigh poverty schools~~)). ((~~Demonstrated~~)) Funded class size ((~~across all nonhigh poverty eligible schools~~)) will be calculated by dividing the total teachers and supplemental teacher FTE ((~~for the individual grade levels of K, 1, 2, or 3,~~)) across all grades K-3 collectively, as described in WAC 392-140-932 into the calculated combined total enrollment ((~~across all nonhigh poverty schools in the individual~~)) in grade levels of K, 1, 2, or 3.**

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-140-915 High poverty funding—Process and definition of eligible schools.

WAC 392-140-936 K-3 demonstrated class size—High poverty schools.

WAC 392-140-942 Weighted average class size—High poverty schools.

WAC 392-140-945 Weighted average class size—Nonhigh poverty schools.

### **WSR 19-01-071**

#### **PROPOSED RULES**

#### **HEALTH CARE AUTHORITY**

[Filed December 17, 2018, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-20-080.

Title of Rule and Other Identifying Information: Chapter 182-537 WAC, School-based health care services, WAC 182-500-0020 and 182-500-0030, definitions "C" and "E."

Hearing Location(s): On January 22, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than January 23, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by January 22, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by January 18, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising chapter 182-537 WAC, School-based health care services, to clarify eligibility, coverage and provider requirements for school-based health services, and adding a definition for core provider agreement to WAC 182-500-0020 and a definition of electronic signature to WAC 182-500-0030.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement:

Shanna Muirhead, P.O. Box 45530, Olympia, WA 98504-5530, 360-725-1153.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The revisions to this rule do not impose additional compliance costs or requirements on providers.

December 17, 2018  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-23-040, filed 11/8/17, effective 12/9/17)

**WAC 182-500-0020 Definitions—C. "Caretaker relative"** means a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care, and who is one of the following:

((+)) (a) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

((=)) (b) The spouse of such parent or relative (including same sex marriage or domestic partner), even after the marriage is terminated by death or divorce.

((=)) (c) Other relatives including relatives of half-blood, first cousins once removed, people of earlier generations (as shown by the prefixes of great, great-great, or great-great-great), and natural parents whose parental rights were terminated by a court order.

"**Carrier**" means an organization that contracts with the federal government to process claims under medicare Part B.

"**Categorically needy (CN) or categorically needy program (CNP)**" is the state and federally funded health care program established under Title XIX of the Social Security Act for people within medicaid-eligible categories, whose income and/or resources are at or below set standards.

"**Categorically needy income level (CNIL)**" is the standard used by the agency to determine eligibility under a categorically needy program.

"**Categorically needy (CN) scope of care**" is the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to people eligible to receive benefits under a CN program. Some state-funded health care programs provide CN scope of care.

"**Center of excellence**" - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

"**Centers for Medicare and Medicaid Services (CMS)**" - The federal agency that runs the medicare, medicaid, and children's health insurance programs, and the federally facilitated marketplace.

"**Children's health program or children's health care programs**" See "Apple health for kids."

"**Client**" means a person who is an applicant for, or recipient of, any Washington apple health program, including managed care and long-term care. See definitions for "applicant" and "recipient" in RCW 74.09.741.

"**Community spouse.**" See "spouse" in WAC 182-500-0100.

"**Core provider agreement**" is a written contract whose terms and conditions bind each provider in the fee-for-service program to applicable federal laws, state laws, and the agency's rules, provider alerts, billing guides, and other sub-regulatory guidance. See WAC 182-502-0005. The core provider agreement is a unilateral contract.

"**Cost-sharing**" means any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for nonnetwork providers, and spending for noncovered services.

"**Cost-sharing reductions**" means reductions in cost-sharing for an eligible person enrolled in a silver level plan in the health benefit exchange or for a person who is an American Indian or Alaska native enrolled in a qualified health plan (QHP) in the exchange.

"**Couple.**" See "spouse" in WAC 182-500-0100.

"**Covered service**" is a health care service contained within a "service category" that is included in a Washington apple health (WAH) benefits package described in WAC 182-501-0060. For conditions of payment, see WAC 182-501-0050(5). A noncovered service is a specific health care service (for example, cosmetic surgery), contained within a service category that is included in a WAH benefits package, for which the agency or the agency's designee requires an approved exception to rule (ETR) (see WAC 182-501-0160). A noncovered service is not an excluded service (see WAC 182-501-0060).

"**Creditable coverage**" means most types of public and private health coverage, except Indian health services, that provide access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under premium-based programs included in Washington apple health (WAH). Creditable coverage is described in 42 U.S.C. 300gg-3 (c)(1).

AMENDATORY SECTION (Amending WSR 15-24-021, filed 11/19/15, effective 1/1/16)

**WAC 182-500-0030 (~~Medical assistance~~) Definitions—E. "Early and periodic screening, diagnosis and treatment (EPSDT)"** is a comprehensive child health program that entitles infants, children, and youth to preventive care and treatment services. EPSDT is available to people age twenty and younger who are eligible for any agency health care program. Access and services for EPSDT are governed by federal rules at 42 C.F.R., Part 441, Subpart B. See chapter 182-534 WAC.

"**Early elective delivery**" means any nonmedically necessary induction or cesarean section before thirty-nine weeks of gestation. Thirty-nine weeks of gestation is greater than thirty-eight weeks and six days.

**"Electronic signature"** means a signature in electronic form attached to or associated with an electronic record including, but not limited to, a digital signature.

**"Emergency medical condition"** means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

~~((1))~~ (a) Placing the patient's health in serious jeopardy;

~~((2))~~ (b) Serious impairment to bodily functions; or

~~((3))~~ (c) Serious dysfunction of any bodily organ or part.

**"Employer-sponsored dependent coverage"** means creditable health coverage for dependents offered by a family member's employer or union, for which the employer or union may contribute in whole or in part towards the premium. Extensions of such coverage (e.g., COBRA extensions) also qualify as employer-sponsored dependent coverage as long as there remains a contribution toward the premiums by the employer or union.

**"Evidence-based medicine (EBM)"** means the application of a set of principles and a method for the review of well-designed studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a health care service is safe, effective, and beneficial when making:

~~((1))~~ (a) Population-based health care coverage policies (WAC 182-501-0055 describes how the agency or its designee determines coverage of services for its health care programs by using evidence and criteria based on health technology assessments); and

~~((2))~~ (b) Individual medical necessity decisions (WAC 182-501-0165 describes how the agency or its designee uses the best evidence available to determine if a service is medically necessary as defined in WAC 182-500-0030).

**"Exception to rule."** See WAC 182-501-0160 for exceptions to noncovered health care services, supplies, and equipment. See WAC 182-503-0090 for exceptions to program eligibility.

**"Expedited prior authorization (EPA)"** means the process for obtaining authorization for selected health care services in which providers use a set of numeric codes to indicate to the agency or the agency's designee which acceptable indications, conditions, or agency or agency's designee-defined criteria are applicable to a particular request for authorization. EPA is a form of "prior authorization."

**"Extended care services"** means nursing and rehabilitative care in a skilled nursing facility provided to a recently hospitalized medicare patient.

**AMENDATORY SECTION** (Amending WSR 16-07-141, filed 3/23/16, effective 4/23/16)

**WAC 182-537-0100 Purpose.** The medicaid agency pays contracted school districts, educational service districts, charter schools, and tribal schools for school-based health care services provided to medicaid-eligible children who require early intervention and special education services consistent with Sections 1903(c) and 1905(a) of the Social Security Act. The agency pays school districts through fee-for-service. Covered services must:

(1) Identify, treat, and manage the ~~((education-related))~~ disabilities ~~((i.e., mental, emotional, and physical))~~ of a child who requires early intervention and special education services;

(2) Be prescribed or recommended by licensed physicians or other licensed health care providers within their scope of practice under state law;

(3) Be medically necessary;

(4) ~~((Be diagnostic, evaluative, habilitative, or rehabilitative in nature;~~

~~((5))~~ Be included in the child's current individualized education program (IEP) or individualized family service plan (IFSP); and

~~((6))~~ (5) Be provided in a school setting or by telemedicine.

**AMENDATORY SECTION** (Amending WSR 16-07-141, filed 3/23/16, effective 4/23/16)

**WAC 182-537-0200 Definitions.** The following definitions and those found in chapter 182-500 WAC apply to this chapter:

**"Agency"** - See WAC 182-500-0010.

**"Assessment"** - For the purposes of this chapter, an assessment is made-up of medically necessary tests given to an individual child by a licensed ~~((professional))~~ health care provider to evaluate whether a child ~~((is determined to be a child))~~ with a disability ~~((and))~~ is in need of early intervention services or special education and related services. Assessments are a part of the individualized education program (IEP) and individualized family service plan (IFSP) evaluation and ((re-evaluation)) reevaluation processes ((and must accompany the individualized education program (IEP) or individualized family service plan (IFSP)).

**"Child with a disability"** - For purposes of this chapter, a child with a disability is a child evaluated and determined to need early intervention services or special education and related services because of a disability in one or more of the following eligibility categories:

- Autism;

- Deaf-blindness;

- Developmental delay for children ages three through nine, with an adverse educational impact, the results of which require special education and related direct services;

- Hearing loss (including deafness);

- Intellectual disability;

- Multiple disabilities;

- Orthopedic impairment;

- Other health impairment;

- Serious emotional disturbance (emotional behavioral disturbance);

- Specific learning disability;

- Speech or language impairment;

- Traumatic brain injury; and

- Visual impairment (including blindness).

**"Core provider agreement"** - See WAC 182-500-0020.



**"Early intervention services"** - ~~((Services designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development, as identified in the infant or toddler's individualized family service plan (IFSP), in any one or more of the following areas, including:~~

- ~~• Physical development;~~
- ~~• Cognitive development;~~
- ~~• Communication development;~~
- ~~• Social or emotional development; or~~
- ~~• Adaptive development.)~~ Means developmental services provided to children ages birth through two. For the purposes of this chapter, early intervention services include:

• Audiology services;

• Nursing services;

• Occupational therapy;

• Physical therapy;

• Psychological services; and

• Speech-language pathology.

**"Electronic signature"** - ~~((A signature in electronic form attached to or associated with an electronic record including, but not limited to, a digital signature.))~~ See WAC 182-500-0030.

**"Evaluation"** - Procedures used to determine whether a child has a disability, and the nature and extent of the early intervention and special education and related services needed. (See WAC 392-172A-01070 and 34 C.F.R. Sec. 303.321.)

~~((**"Evaluation report"** - See WAC 392-172A-03035.))~~

**"Fee-for-service"** - See WAC 182-500-0035.

**"Handwritten signature"** - A scripted name or legal mark of an individual on a document to signify knowledge, approval, acceptance, or responsibility of the document.

**"Health care-related services"** - For the purposes of this chapter, means developmental, corrective, and other supportive services required to assist ~~((an eligible child to benefit from special education. For the purposes of the school-based health care services program, related services))~~ a student eligible for special education and include:

- Audiology;
- Counseling;
- ~~((Nursing))~~ School health services and school nurse services;

- Occupational therapy;
- Physical therapy;
- Psychological assessments and services; and
- Speech-language therapy.

**"Individualized education program (IEP)"** - A written educational program for a child who is age three through twenty and eligible for special education. An IEP is developed, reviewed and revised ~~((under))~~ according to WAC 392-172A-03090 through ~~((392-172A-03135))~~ 392-172A-03115.

**"Individualized family service plan (IFSP)"** - A plan for providing early intervention services to a child birth through age two, with a disability or developmental delay and the child's family. The IFSP:

- Is based on the evaluation and assessment described in 34 C.F.R. Sec. 303.321;
- Includes the content specified in 34 C.F.R. Sec. 303.344(;

~~• Is implemented as soon as possible after parental consent is obtained for the early intervention services in the IFSP (consistent with 34 C.F.R. Sec. 303.420)); and~~

~~• Is developed under the IFSP procedures in 34 C.F.R. Secs. 303.342, 303.343, and 303.345.~~

**"Interagency agreement"** - Is a contract that describes and defines the relationship between the agency, the school-based health care services program, and the school district.

**"Medically necessary"** - See WAC 182-500-0070.

**"National provider identifier (NPI)"** - See WAC 182-500-0075.

~~((**"Qualified health care provider"** - See WAC 182-537-0350.))~~

**"Reevaluation"** - Procedures used to determine whether a child continues to ~~((be in need of))~~ need early intervention services or special education and related services. (See WAC 392-172A-03015 and 34 C.F.R. Secs. 303.342 and 303.343.)

**"Related services"** - See WAC 392-172A-01155.

**"School-based health care services program"** or **"SBHS"** - ~~((School-based health care services for infants and toddlers receiving early intervention services and children who require special education services, which are diagnostic, evaluative, habilitative, and rehabilitative in nature; are based on the child's medical needs; and are included in the child's IEP or IFSP. The agency pays school districts for school-based health care services delivered to Medicaid-eligible children who require special education services under Section 1903(c) of the Social Security Act, and to people under the Individuals with Disabilities Education Act (IDEA) Part B and Part C.))~~ Is an agency-administered program that pays contracted school districts, educational service districts (ESDs), charter schools, and tribal schools for providing early intervention services and special education health-related services to children ages birth through twenty who have an IEP or IFSP. Services must be provided by department of health (DOH)-licensed providers who are enrolled under the school district's ProviderOne account.

**"Signature log"** - A typed list that verifies a licensed provider's identity by associating each provider's signature with their name, handwritten initials, credentials, license and national provider ~~((identification (NPI) numbers))~~ identifier (NPI).

**"Special education"** - ~~((Specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings, and instruction in physical education. Refer to))~~ See WAC 392-172A-01175.

**"Supervision"** - Means supervision ~~((that is))~~ provided by a licensed health care provider either directly or indirectly ~~((in order))~~ to assist the supervisee in the administration of health care-related services outlined in the IEP or IFSP.

**"Telemedicine"** - See WAC 182-531-1730.

AMENDATORY SECTION (Amending WSR 16-07-141, filed 3/23/16, effective 4/23/16)

**WAC 182-537-0300 ((Client)) Student eligibility.** ~~((Children who require special education services must be receiving Title XIX Medicaid under a Washington apple~~

health (WAH) categorically needy program (CNP) or WAH medically needy program (MNP) to be eligible for school-based health care services. Eligible children enrolled in a managed care organization (MCO) receive school-based health care services on a fee-for-service basis.) (1) Contracted school districts may receive medicaid payment for students ages birth through twenty who:

(a) Have an active individualized family service plan (IFSP) or individualized education program (IEP); and

(b) Who are receiving Title XIX medicaid under a Washington apple health categorically needy program (CNP) or medically needy program (MNP).

(2) Eligible students enrolled in an agency-contracted managed care organization (MCO) are eligible to receive school-based health care services through fee-for-service.

AMENDATORY SECTION (Amending WSR 16-07-141, filed 3/23/16, effective 4/23/16)

**WAC 182-537-0350 Provider qualifications.** (1) School-based health care services (SBHS) must be delivered by ~~((qualified))~~ health care providers who are enrolled with the medicaid agency and who meet state licensure ~~((and certification))~~ requirements, including active, unrestricted department of health (DOH) licensure. The following people may provide SBHS:

(a) Audiologists who meet the requirements ~~((of))~~ described in chapters 246-828 WAC and 18.35 RCW;

(b) Licensed advanced social workers (LIACSW) who meet the requirements ~~((of))~~ described in chapters 246-809 WAC and 18.225 RCW;

(c) Licensed independent clinical social workers (LiCSW) who meet the requirements described in chapters 246-809 WAC and 18.225 RCW;

(d) Licensed mental health counselors (LMHC) who meet the requirements ~~((of))~~ described in chapters 246-809 WAC and 18.225 RCW;

(e) Licensed mental health counselor associates (LMHCA) who meet the requirements ~~((of))~~ described in chapters 246-809 WAC and 18.225 RCW and are under the direction and supervision of a qualified LiACSW, LiCSW, or LMHC;

(f) Licensed registered nurses (RN) who meet the requirements ~~((of))~~ described in chapters 246-840 WAC and 18.79 RCW;

(g) Licensed practical nurses (LPN) who meet the requirements ~~((of))~~ described in chapters 246-840 WAC and 18.79 RCW and are under the direction and supervision of a ~~((qualified))~~ licensed RN;

(h) ~~((Noncredentialed))~~ Nonlicensed school employees who are delegated certain limited health care tasks by an RN and are supervised according to professional practice standards in RCW 18.79.260, 18.79.290, and 28A.210.275;

(i) Licensed occupational therapists (OT) who meet the requirements ~~((of))~~ described in chapters 246-847 WAC and 18.59 RCW;

(j) Licensed occupational therapist assistants (OTA) who meet the requirements ~~((of))~~ described in chapters 246-847 WAC and 18.59 RCW and are under the direction and supervision of a ~~((qualified))~~ licensed OT;

(k) Licensed physical therapists (PT) who meet the requirements ~~((of))~~ described in chapters ~~((246-924 WAC and 18.83))~~ 246-915 WAC and 18.74 RCW;

(l) Licensed physical therapist assistants (PTA) who meet the requirements ~~((of))~~ described in chapters 246-915 WAC and 18.74 RCW and are under the direction and supervision of a licensed PT;

(m) Licensed psychologists who meet the requirements ~~((of))~~ described in chapters 246-924 WAC and 18.83 RCW;

(n) Licensed speech-language pathologists (SLP) who meet the requirements ~~((of))~~ described in chapters 246-828 WAC and 18.35 RCW; and

(o) Speech-language pathology assistants (SLPA) who meet the requirements ~~((of))~~ described in chapters 246-828 WAC and 18.35 RCW and who are under the direction and supervision of a licensed SLP.

(2) For services provided under the supervision of a PT, OT, SLP, nurse, counselor, or social worker, the supervising provider must:

(a) Ensure the child receives quality therapy services by providing supervision in accordance with professional practice standards; and

~~((b))~~ ~~((See the child face-to-face when services begin and at least once more during the school year;~~

~~((c))~~ Approve and cosign all treatment notes written by the supervisee before submitting claims for payment ~~((and~~

~~((d))~~ ~~Record supervisory activities and provide the documents to the agency or its designee upon request)).~~

(3) The school district must ensure providers meet the professional licensing ~~((and certification))~~ requirements described in the agency's SBHS billing guide and in this chapter.

(4) The licensing exemptions found in the following regulations do not apply to federal medicaid reimbursement:

(a) Counseling under RCW 18.225.030;

(b) Psychology under RCW 18.83.200;

(c) Social work under RCW 18.320.010; and

(d) Speech therapy under RCW 18.35.195.

(5) People not specifically listed in subsection (1) of this section may not participate in the SBHS program including, but not limited to:

(a) Interim permit holders;

(b) Limited permit holders; and

(c) People completing education required for DOH licensure.

AMENDATORY SECTION (Amending WSR 16-07-141, filed 3/23/16, effective 4/23/16)

**WAC 182-537-0400 Covered services.** All services covered under this section may be provided through telemedicine as described in WAC 182-531-1730 and in the agency's school-based health care services (SBHS) billing guide. Covered services include:

(1) Evaluations when the child is determined to have a disability, and is in need of early intervention services or special education and health care-related services that result in an individualized education program (IEP) or individualized family service plan (IFSP);

(2) Health care-related services (~~(including)~~) authorized in an IEP or IFSP limited to:

- (a) Audiology;
- (b) Counseling;
- (c) School health services and school nursing services;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) Psychological assessments and services; and
- (g) Speech-language therapy.

(3) Reevaluations, to determine whether a child continues to need early intervention services or special education and health care-related services.

AMENDATORY SECTION (Amending WSR 16-07-141, filed 3/23/16, effective 4/23/16)

**WAC 182-537-0500 Noncovered services.** Noncovered services include, but are not limited to the following:

- (1) Applied behavior analysis (ABA);
- (2) Attending meetings;
- (3) Charting;
- (4) ~~(Equipment preparation;~~
- ~~(5) Evaluations that do not result in an IEP or IFSP;~~
- ~~(6))~~ Instructional assistant contact;
- ~~((7))~~ (5) Observation not provided directly after service delivery;

~~((8))~~ (6) Parent consultation;

~~((9))~~ (7) Parent contact;

~~((10))~~ (8) Planning;

~~((11))~~ (9) Preparing and sending correspondence to parents or other professionals;

~~((12))~~ (10) Professional consultation;

~~((13))~~ (11) Report writing;

~~((14))~~ (12) Review of records;

~~((15))~~ (13) School district staff accompanying a child who requires special education services to and from school on the bus when direct services are not provided;

(14) Supervision;

~~((16))~~ (15) Teacher contact;

~~((17))~~ (16) Test interpretation; and

~~((18))~~ (17) Travel and transporting.

AMENDATORY SECTION (Amending WSR 16-07-141, filed 3/23/16, effective 4/23/16)

**WAC 182-537-0600 School district requirements for billing and payment.** To receive payment from the medicaid agency for providing school-based health care services (SBHS) to eligible children, a school district must:

(1) Enroll as a billing provider in ProviderOne and have a current, signed core provider agreement (CPA) with the agency.

(2) Have a current, signed, and executed interagency agreement with the agency.

(3) Meet the applicable requirements in chapter 182-502 WAC.

(4) Comply with the agency's current, published ProviderOne billing and resource guide.

(5) Bill according to the agency's current ~~((school-based health care services provider guide, the school-based health~~

~~care services))~~ SBHS billing guide and the SBHS fee schedule((, and),

(6) Comply with the intergovernmental transfer (IGT) process. ~~((After a school district receives its invoice from the agency,))~~ The school district must provide its local match to the agency within one hundred twenty days of the invoice date.

(a) If local match is not received within one hundred twenty days of the invoice date, the agency will deny claims.

(b) School districts may resubmit denied claims within twenty-four months from the date of service under WAC 182-502-0150.

~~((6))~~ (7) Provide only health care-related services identified through a current individualized education program (IEP) or individualized family service plan (IFSP).

~~((7))~~ (8) Use only licensed health care ((professionals qualified)) providers under WAC 182-537-0350.

~~((8))~~ (9) Enroll licensed health care providers as servicing providers under the school district's ((national provider identifier (NPI) number)) ProviderOne account, and ensure providers have their own national provider identifier (NPI) number.

~~((9))~~ (10) Meet documentation requirements described in WAC 182-537-0700.

AMENDATORY SECTION (Amending WSR 16-07-141, filed 3/23/16, effective 4/23/16)

**WAC 182-537-0700 School district documentation requirements.** (1) Providers must document all school-based health care services ~~((SBHS))~~ as required in this section ~~((, WAC 182-502-0020,))~~ and the medicaid agency's school-based health care services ~~((provider))~~ (SBHS) billing guide.

(2) ~~((All required documentation must include the provider's printed name, handwritten or electronic signature, and title. Assistants practicing under WAC 182-537-0350 must have a licensed supervisor co-sign all documents as required by this subsection.~~

(3) The following documentation must be maintained for each client for a minimum of six years:

(a) Professional)) Documentation to justify billed claims must be maintained for at least six years from the date of service.

(3) Records for each student must include, but are not limited to:

(a) A referral or prescription for services by a physician or other licensed health care provider within their scope of practice;

(b) Assessment reports;

~~((b))~~ (c) Evaluation and reevaluation reports;

~~((e) IEP or IFSP; and))~~

(d) Individualized education program (IEP) or individualized family service plan (IFSP);

(e) Attendance records; and

(f) Treatment notes. ~~((4))~~ Treatment notes must include the:

~~((a))~~ (i) Child's name;

~~((b))~~ (ii) Child's ProviderOne client ID;

~~((e))~~ (iii) Child's date of birth;

~~((d))~~ (iv) Date of service, and for each date of service:

~~((i+))~~ (A) Time-in;  
~~((ii))~~ (B) Time-out;  
~~((iii))~~ (C) A procedure code for and description of each service provided;  
~~((iv))~~ (D) The child's progress related to each service;  
~~((v))~~ Number of units billed for the service; and  
~~((vi))~~ (E) Whether the ~~((treatment))~~ occupational therapy, speech-language therapy, physical therapy or counseling service described in the note was individual or group therapy;  
(F) The licensed provider's printed name, handwritten or electronic signature, and title; and  
(G) Assistants, as defined in WAC 182-537-0350, who provide health care-related services, must have their supervising provider cosign all treatment notes in accordance with the supervisory requirements for the provider type.

~~((5))~~ (4) The agency accepts electronic records and signatures. Maintaining the records in an electronic format is acceptable only if the original records are available to the agency for program integrity activities for up to six years after the date of service. Each school district is responsible for determining what standards are consistent with state and federal electronic record and signature requirements.

~~((6))~~ (5) For a signature to be valid, it must be handwritten or electronic. Signature by stamp is acceptable only if the provider is unable to sign by hand due to a physical disability.

~~((7))~~ (6) School districts must maintain a signature log to support the provider's signature identity.

~~((8))~~ (7) The signature log must include the provider's:

- (a) Printed name;
- (b) Handwritten signature;
- (c) Initials;
- (d) Credentials;
- (e) License number; and
- (f) National provider identifier (NPI) ~~((number))~~.

~~((9))~~ (8) Each school district must establish policies and procedures to ensure complete, accurate, and authentic records. These policies and procedures must include:

- (a) Security provisions to prevent the use of an electronic signature by anyone other than the licensed provider to ~~((which))~~ whom the electronic signature belongs;
- (b) Procedures that correspond to recognized standards and laws and protect against modifications;
- (c) Protection of the privacy and integrity of the documentation;
- (d) A list of which documents will be maintained and signed electronically; and
- (e) Verification of the signer's identity at the time the signature was generated.

AMENDATORY SECTION (Amending WSR 16-07-141, filed 3/23/16, effective 4/23/16)

**WAC 182-537-0800 Program integrity.** (1) To ensure compliance with program rules, the medicaid agency conducts program integrity activities under chapters 182-502 and 182-502A WAC.

(2) School districts must participate in all program integrity activities.

(3) School districts are responsible for the accuracy, compliance, and completeness of all claims submitted for medicaid ~~((reimbursement))~~ payment.

(4) The agency conducts reviews and recovers overpayments if a school district does not comply with agency requirements according to agency rules.

## WSR 19-01-074

### PROPOSED RULES

### HEALTH CARE AUTHORITY

[Filed December 17, 2018, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-20-066.

Title of Rule and Other Identifying Information: WAC 182-535-1066 Dental-related services—Medical care services clients (formerly general assistance (GA)) and 182-535-1094 Dental-related services—Covered—Oral and maxillofacial surgery services.

Hearing Location(s): On January 22, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than January 23, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by January 22, 2019.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov), by January 18, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this section to reflect changes in covered benefits, and to remove certain authorization requirements to expedite claims processing and the delivery of timely services.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Pixie Needham, P.O. Box 45502, Olympia, WA 98504-2716, 360-725-9967.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The revisions to this rule do not impose additional compliance costs or requirements on providers.

December 17, 2018  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535-1066 Dental-related services—Medical care services clients ((formerly general assistance (GA))).** (1) The medicaid agency covers the following dental-related services for a medical care services client under WAC 182-501-0060 when the services are provided by a dentist to assess, diagnose, and treat pain, infection, or trauma of the mouth, jaw, or teeth, including treatment of postsurgical complications, such as dry socket:

- (a) Limited oral evaluation;
  - (b) Periapical or bitewing radiographs (X-rays) that are medically necessary to diagnose only the client's chief complaint;
  - (c) Palliative treatment to relieve dental pain or infection;
  - (d) Pulpal debridement to relieve dental pain or infection; and
  - (e) Tooth extraction.
- (2) ~~((Tooth extractions require prior authorization when: (a) The extraction of a tooth or teeth results in the client becoming edentulous in the maxillary arch or mandibular arch; or (b) A full mouth extraction is necessary because of radiation therapy for cancer of the head and neck. (3)))~~ Each dental-related procedure described under this section is subject to the coverage limitations listed in this chapter.

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535-1094 Dental-related services—Covered—Oral and maxillofacial surgery services.** Clients described in WAC 182-535-1060 are eligible to receive the oral and maxillofacial surgery services listed in this section, subject to the coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Oral and maxillofacial surgery services.** The medicaid agency:

(a) Requires enrolled providers who do not meet the conditions in WAC 182-535-1070(3) to bill claims for services that are listed in this subsection using only the current dental terminology (CDT) codes.

(b) Requires enrolled providers (oral and maxillofacial surgeons) who meet the conditions in WAC 182-535-1070(3) to bill claims using current procedural terminology (CPT) codes unless the procedure is specifically listed in the agency's current published billing guide as a CDT covered code (e.g., extractions).

(c) Covers nonemergency oral surgery performed in a hospital or ambulatory surgery center only for:

- (i) Clients age eight and younger;
- (ii) Clients age nine through twenty only on a case-by-case basis and when the site-of-service is prior authorized by the agency; and
- (iii) Clients any age of the developmental disabilities administration of the department of social and health services (DSHS).

(d) For site-of-service and oral surgery CPT codes that require prior authorization, the agency requires the dental provider to submit current records (within the past twelve months), including:

- (i) Documentation used to determine medical appropriateness;
- (ii) Cephalometric films;
- (iii) Radiographs (X-rays);
- (iv) Photographs; and
- (v) Written narrative/letter of medical necessity, including proposed billing codes.

(e) Requires the client's dental record to include supporting documentation for each type of extraction or any other surgical procedure billed to the agency. The documentation must include:

- (i) Appropriate consent form signed by the client or the client's legal representative;
- (ii) Appropriate radiographs;
- (iii) Medical justification with diagnosis;
- (iv) Client's blood pressure, when appropriate;
- (v) A surgical narrative and complete description of each service performed beyond surgical extraction or beyond code definition;
- (vi) A copy of the post-operative instructions; and
- (vii) A copy of all pre- and post-operative prescriptions.

(f) Covers simple and surgical extractions. ~~((Authorization is required for the following:~~

~~(i) Surgical extractions of four or more teeth per arch over a six-month period, resulting in the client becoming edentulous in the maxillary arch or mandibular arch;~~

~~(ii) Simple extractions of four or more teeth per arch over a six-month period, resulting in the client becoming edentulous in the maxillary arch or mandibular arch; or~~

~~(iii) Tooth number is not able to be determined.))~~

(g) Covers unusual, complicated surgical extractions with prior authorization.

(h) Covers tooth reimplantation/stabilization of accidentally evulsed or displaced teeth.

(i) Covers surgical extraction of unerupted teeth for clients.

(j) Covers debridement of a granuloma or cyst that is five millimeters or greater in diameter. The agency includes debridement of a granuloma or cyst that is less than five millimeters as part of the global fee for the extraction.

(k) Covers ~~((the following without prior authorization: (i) biopsy of soft oral tissue((; (ii) brush biopsy((; and (iii) and surgical excision of soft tissue lesions. ((+)~~

~~Requires providers to keep all biopsy reports or findings in the client's dental record.~~

~~(m) Covers the following with prior authorization (photos or radiographs, as appropriate, must be submitted to the agency with the prior authorization request):~~

~~(i) Alveoloplasty on a case-by-case basis.~~

~~(ii)) Providers must keep all biopsy reports or findings in the client's dental record.~~

~~(l) Covers only the following excisions of bone tissue in conjunction with placement of complete or partial dentures:~~

~~((A)) (i) Removal of lateral exostosis;~~

~~((B)) (ii) Removal of torus palatinus or torus mandibularis; ~~(and~~~~

~~(C)) (iii) Surgical reduction of osseous tuberosity.~~

~~((iii) Surgical access of unerupted teeth for clients age twenty and younger.)~~

~~(2) Alveoloplasty.~~

~~(3) Surgical incisions. The agency covers the following surgical incision-related services:~~

~~(a) Uncomplicated intraoral and extraoral soft tissue incision and drainage of abscess. The agency does not cover this service when combined with an extraction or root canal treatment. Documentation supporting the medical necessity must be in the client's record.~~

~~(b) Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue. Documentation supporting the medical necessity for the service must be in the client's record.~~

~~(c) Frenuloplasty/frenulectomy for clients age six and younger without prior authorization.~~

~~(d) Frenuloplasty/frenulectomy for clients age seven through twelve only on a case-by-case basis and when prior authorized. Photos must be submitted to the agency with the prior authorization request. Documentation supporting the medical necessity for the service must be in the client's record.~~

~~(e) Surgical access of unerupted teeth for clients age twenty and younger, with prior authorization.~~

~~((3)) (4) Occlusal orthotic devices. (Refer to WAC 182-535-1098 (4)(c) for occlusal guard coverage and limitations on coverage.) The agency covers:~~

~~(a) Occlusal orthotic devices for clients age twelve through twenty only on a case-by-case basis and when prior authorized.~~

~~(b) An occlusal orthotic device only as a laboratory processed full arch appliance.~~

### WSR 19-01-080

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

[Filed December 17, 2018, 1:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-20-076.

Title of Rule and Other Identifying Information: WAC 182-550-3000 Hospital services—Payment method, 182-550-3470 Hospital services—Payment method—Bariatric surgery—Per case rate, 182-550-4400 Hospital services—Services—Exempt from DRG payment, and 182-550-4800

Hospital services—Hospital payment methods—State-administered programs.

Hearing Location(s): On January 22, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than January 23, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by January 22, 2019.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov), by January 18, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is modifying these sections to remove the bariatric fixed case rate.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Abigail Cole, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1835.

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

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule does not affect small businesses. The businesses affected by this amendment are hospitals. Hospitals do not meet the definition of a small business.

December 17, 2018

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-11-074, filed 5/16/18, effective 7/1/18)

**WAC 182-550-3000 Payment method.** (1) The medic-aid agency uses the diagnosis-related group (DRG) payment method to pay for covered inpatient hospital services, except as specified in WAC 182-550-4300 and 182-550-4400.

(2) The agency assigns a DRG code to each claim for an inpatient hospital stay using 3M™ software (AP-DRG or APR-DRG) or other software currently in use by the agency. That DRG code determines the method used to pay claims for prospective payment system (PPS) hospitals. For the purpose of this section, PPS hospitals include all in-state and border area hospitals, except both of the following:

(a) Critical access hospitals (CAH), which the agency pays per WAC 182-550-2598; and

(b) Military hospitals, which the agency pays using the following payment methods depending on the revenue code billed by the hospital:

- (i) Ratio of costs-to-charges (RCC); and
- (ii) Military subsistence per diem.

(3) For each DRG code, the agency establishes an average length of stay (ALOS). The agency may use the DRG ALOS as part of its authorization process and payment methods as specified in this chapter.

(4) An inpatient claim payment includes all hospital covered services provided to a client during days the client is eligible. This includes, but is not limited to:

- (a) The inpatient hospital stay;
- (b) Outpatient hospital services, including preadmission, emergency department, and observation services related to an inpatient hospital stay and provided within one calendar day of a client's inpatient hospital stay. These outpatient services must be billed on the inpatient hospital claim;
- (c) Any hospital covered service for which the admitting hospital sends the client to another facility or provider during the client's inpatient hospital stay, and the client returns as an inpatient to the admitting hospital.

(5) The agency's claim payment for an inpatient stay is determined by the payment method. The agency pays hospitals for inpatient hospital covered services provided to clients using the following methods:

Payment Method	General Description of Payment Formula	WAC Reference
DRG (Diagnostic Related Group)	DRG specific relative weight times hospital specific DRG rate times maximum service adjustor	182-550-3000
Per Diem	Hospital-specific daily rate for the service (psych, rehab, detox, or CUP) times covered allowable days	182-550-2600 and 182-550-3381
<del>((Single-Case-Rate</del>	<del>Hospital specific bariatric-case rate per stay</del>	<del>182-550-3470))</del>
Fixed Per Diem for Long Term Acute Care (LTAC)	Fixed LTAC rate per day times allowed days plus ratio of cost to charges times allowable covered ancillaries not included in the daily rate	182-550-2595 and 182-550-2596
Ratio of Costs-to-Charges (RCC)	RCC times billed covered allowable charges	182-550-4500
Cost Settlement with Ratio of Costs-to-Charges	RCC times billed covered allowable charges (subject to hold harmless and other settlement provisions of the Certified Public Expenditure program)	182-550-4650 and 182-550-4670

Payment Method	General Description of Payment Formula	WAC Reference
Cost Settlement with Weighted Costs-to-Charges (WCC)	WCC times billed covered allowable charges subject to Critical Access Hospital settlement provisions	182-550-2598
Military	Depending on the revenue code billed by the hospital: <ul style="list-style-type: none"> <li>• RCC times billed covered allowable charges; and</li> <li>• Military subsistence per diem.</li> </ul>	182-550-4300
Administrative Day	Standard administrative day rate times days authorized by the agency combined with RCC times ancillary charges that are allowable and covered for administrative days	182-550-3381

(6) For claims paid using the DRG method, the payment may not exceed the billed amount.

(7) The agency may adjust the initial allowable calculated for a claim when one or more of the following occur:

(a) A claim qualifies as a high outlier (see WAC 182-550-3700);

(b) A claim is paid by the DRG method and a client transfers from one acute care hospital or distinct unit per WAC 182-550-3600;

(c) A client is not eligible for a Washington apple health program on one or more days of the hospital stay;

(d) A client has third-party liability coverage at the time of admission to the hospital or distinct unit;

(e) A client is eligible for Part B medicare, the hospital submitted a timely claim to medicare for payment, and medicare has made a payment for the Part B hospital charges;

(f) A client is discharged from an inpatient hospital stay and, within fourteen calendar days, is readmitted as an inpatient to the same hospital or an affiliated hospital. The agency or the agency's designee performs a retrospective utilization review (see WAC 182-550-1700) on the initial admission and all readmissions to determine which inpatient hospital stays qualify for payment. The review may determine:

(i) If both admissions qualify for separate reimbursement;

(ii) If both admissions must be combined to be reimbursed as one payment; or

(iii) Which inpatient hospital ~~((stay(s)))~~ stay qualifies for individual payment.

(g) A readmission is due to a complication arising from a previous admission (e.g., provider preventable condition described in WAC 182-502-0022). The agency or the agency's designee performs a retrospective utilization review to determine if both admissions are appropriate and qualify for individual payments; or

(h) The agency identifies an enhanced payment due to a provider preventable condition, hospital-acquired condition, serious reportable event, or a condition not present on admission.

(8) In response to direction from the legislature, the agency may change any one or more payment methods outlined in chapter 182-550 WAC for the purpose of achieving the legislature's targeted expenditure levels. The legislative

direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the agency in the Biennial Appropriations Act. In response to this legislative direction, the agency may calculate an adjustment factor (known as an "inpatient adjustment factor") to apply to inpatient hospital rates.

(a) The inpatient adjustment factor is a specific multiplier calculated by the agency and applied to existing inpatient hospital rates to meet targeted expenditure levels as directed by the legislature.

(b) The agency will apply the inpatient adjustment factor when the agency determines that its expenditures on inpatient hospital rates will exceed the legislature's targeted expenditure levels.

(c) The agency will apply any such inpatient adjustment factor to each affected rate.

(9) The agency does not pay for a client's ((day(s))) day of absence from the hospital.

(10) The agency pays an interim billed hospital claim for covered inpatient hospital services provided to an eligible client only when the interim billed claim meets the criteria in WAC 182-550-2900.

(11) The agency applies to the allowable for each claim all applicable adjustments for client responsibility, any third-party liability, medicare payments, and any other adjustments as determined by the agency.

(12) The agency pays hospitals in designated bordering cities for allowed covered services as described ((#)) under WAC 182-550-3900.

(13) The agency pays out-of-state hospitals for allowed covered services as described ((#)) under WAC 182-550-4000.

(14) The agency's annual aggregate payments for inpatient hospital services, including payments to state-operated hospitals, will not exceed the estimated amounts that the agency would have paid using medicare payment principles.

(15) When hospital ownership changes, the agency's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v)(1)(O).

(16) Hospitals participating in the ((Washington)) apple health program must annually submit to the agency:

(a) A copy of the hospital's CMS medicare cost report (Form 2552 version currently in use by the agency) that is the official "as filed" cost report submitted to the medicare fiscal intermediary; and

(b) A disproportionate share hospital (DSH) application if the hospital wants to be considered for DSH payments. See WAC 182-550-4900 for the requirements for a hospital to qualify for a DSH payment.

(17) Reports referred to in subsection (16) of this section must be completed according to:

- (a) Medicare's cost reporting requirements;
- (b) The provisions of this chapter; and
- (c) Instructions issued by the agency.

(18) The agency requires hospitals to follow generally accepted accounting principles.

(19) Participating hospitals must permit the agency to conduct periodic audits of their financial records, statistical records, and any other records as determined by the agency.

(20) The agency limits payment for private room accommodations to the semiprivate room rate. Room charges must not exceed the hospital's usual and customary charges to the general public as required by 42 C.F.R. Sec. 447.271.

(21) For a client's hospital stay that involves regional support network (RSN)-approved voluntary inpatient or involuntary inpatient hospitalizations, the hospital must bill the agency for payment. When the hospital contracts directly with the RSN, the hospital must bill the RSN for payment.

(22) For psychiatric hospitals and psychiatric hospital units, when a claim groups to a DRG code that pays by the DRG method, the agency may manually price the claim at the hospital's psychiatric per diem rate.

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

**WAC 182-550-3470 Payment method—Bariatric surgery—Per case rate.** (1) Effective through June 30, 2019, the medicaid agency:

(a) Pays for bariatric surgery provided in designated agency-approved hospitals when all criteria established in WAC 182-550-2301 are met;

(b) Requires qualification and prior authorization of the provider before bariatric surgery related services are provided (see WAC 182-550-2301); and

(c) Uses a per case rate to pay for bariatric surgery.

(2) For dates of admission before August 1, 2007, the agency determines the per case rate by using a hospital-specific medicare fee schedule rate the agency used to pay for bariatric surgery.

(3) For dates of admission after July 31, 2007, the agency determines the per case rate by using the bariatric per case rate calculation method described in this subsection and established by the agency's new inpatient payment system implemented on August 1, 2007.

(a) To adjust hospital-specific operating, capital, and direct medical education costs, the agency:

(i) Inflates the hospital-specific operating, capital, and direct medical education routine costs from the hospital's medicare cost report fiscal year to the mid-point of the state fiscal year.

(ii) Divides the labor portion of the hospital-specific operating costs by the hospital-specific medicare wage index in effect for the medicare inpatient prospective payment system federal fiscal year that most closely matches the time period covered by the medicare cost report used for these calculations.

(b) To determine the statewide standardized weighted average cost per case by using the adjusted hospital-specific operating and capital costs derived in (a) of this subsection, the agency:

(i) Adjusts the hospital-specific operating and capital costs to remove the indirect costs associated with approved medical education programs; then

(ii) Calculates the operating standardized amount by dividing statewide aggregate adjusted operating costs by the statewide aggregate number cases in the base year claims data; then



(iii) Calculates the capital standardized amount by dividing statewide aggregate adjusted capital costs by the statewide aggregate number of cases in the base year claims data.

(c) To make hospital-specific adjustments to the statewide operating and capital standardized amounts, the agency:

(i) Defines the adjusted operating standardized amount for bariatric services as the average of all instate hospitals operating standardized amount after making adjustments for the wage index and the indirect medical education. The agency:

(A) To determine the labor portion, uses the factor established by medicare multiplied by the statewide operating standardized amount, then multiplies the labor portion of the operating standardized amount by (1.0 plus the most currently available hospital-specific medicare wage index); then

(B) Adds the nonlabor portion of the operating standardized amount to the labor portion derived in (c)(i)(A) of this subsection; then

(C) Multiplies the amount derived in (c)(i)(B) of this subsection by 1.0 plus the most currently available hospital-specific medicare operating indirect medical education factor to derive the operating standardized amount for bariatric services; then

(D) Adjusts the hospital-specific operating standardized amount for bariatric services for inflation based on the CMS PPS input price index. The adjustment is to reflect the increases in price index levels between the base year data and the payment system implementation year.

(E) Calculates the statewide bariatric operating payment per case amount by:

(I) Totaling the hospital-specific amounts derived in (c)(i)(D) of this subsection for each hospital approved by the agency to provide bariatric services; and

(II) Dividing the results in (E)(I) of this subsection by the number of instate hospitals approved by the agency to provide bariatric services.

(ii) Defines the adjusted capital standardized amount for bariatric services as the average of all instate hospitals capital standardized amount after adjusting for the indirect medical education. The agency:

(A) Multiplies the amount derived in (b)(iii) of this subsection by (1.0 plus the most currently available hospital-specific medicare capital indirect medical education factor) to derive the adjusted indirect medical education capital standardized amount for bariatric services.

(B) Adjusts the hospital-specific capital standardized amount for bariatric services for inflation based on the CMS PPS input price index. The adjustment is to reflect the increases in price index levels between the base year data and the payment system implementation year.

(C) Calculates the statewide bariatric capital payment per case amount by:

(I) Totaling the hospital-specific amounts derived in (c)(ii)(B) of this subsection for each hospital approved by the agency to provide bariatric services; and

(II) Dividing the results derived in (C)(I) of this subsection by the number of instate hospitals approved by the agency to provide bariatric services.

(iii) Defines the direct medical education standardized amount for bariatric services as the instate hospitals hospital-

specific direct medical education weighted cost per case multiplied by the CMS PPS input price index. The adjustment is to reflect the increases in price index levels between the base year data and the payment system implementation year. The agency calculates the statewide bariatric direct medical education standardized payment per case by:

(A) Multiplying the hospital-specific direct medical education weighted cost per case for each hospital approved by the agency to provide bariatric services by the CMS PPS input price index; then

(B) Totaling the hospital-specific amounts derived in (iii)(A) of this subsection for each hospital approved by the agency to provide bariatric services.

(d) To determine hospital-specific bariatric payment per case amount, the agency sums for each hospital the instate statewide bariatric operating payment per case, the instate statewide bariatric capital payment per case, and the hospital-specific direct medical education payment per case. (For critical border hospitals, the direct medical education payment per case is limited at the highest direct medical education payment per case amount for the instate hospitals approved by the agency to provide bariatric services.)

(e) The agency adjusts the hospital-specific bariatric payment per case amount by a factor to achieve budget neutrality for the state's aggregate inpatient payments for all hospital inpatient services.

(f) The agency may make other necessary adjustments as directed by the legislature (e.g., rate rebasing and other changes as directed by the legislature).

AMENDATORY SECTION (Amending WSR 16-04-051, filed 1/28/16, effective 3/1/16)

**WAC 182-550-4400 Services—Exempt from DRG payment.** (1) Inpatient services are exempt from the diagnosis-related group (DRG) payment method only if they qualify for payment methods specifically mentioned in other sections of this chapter or in this section.

(2) Subject to the restrictions and limitations in this section, the agency exempts the following services for medicaid and CHIP clients from the DRG payment method. This policy also applies to covered services paid through medical care services (MCS) and any other state-administered program, except when otherwise indicated in this section. The exempt services are:

(a) Alcohol or other drug detoxification services when provided in a hospital having a detoxification provider agreement with the agency to perform these services.

(b) Hospital-based intensive inpatient detoxification, medical stabilization, and drug treatment services provided to chemical-using pregnant (CUP) women by a certified hospital. These are medicaid program services and are not covered or funded by the agency through MCS or any other state-administered program.

(c) Acute physical medicine and rehabilitation (acute PM&R) services.

(d) Psychiatric services. A mental health designee that arranges to pay a hospital directly for psychiatric services may use the agency's payment methods or contract with the hospital to pay using different methods. Claims not paid

directly through a mental health designee are paid through the agency's payment system.

(e) Chronic pain management treatment provided in a hospital approved by the agency to provide that service.

(f) Administrative day services. The agency pays administrative days for one or more days of a hospital stay in which an acute inpatient or observation level of care is not medically necessary, and a lower level of care is appropriate. The administrative day rate is based on the statewide average daily medicaid nursing facility rate, which is adjusted annually. The agency may designate part of a client's stay to be paid an administrative day rate upon review of the claim or the client's medical record, or both.

(g) Inpatient services recorded on a claim grouped by the agency to a DRG for which the agency has not published an all-patient DRG (AP-DRG) or all-patient refined DRG (APR-DRG) relative weight. The agency will deny payment for claims grouped to DRG 469, DRG 470, APR DRG 955, or APR DRG 956.

(h) Organ transplants that involve heart, intestine, kidney, liver, lung, allogeneic bone marrow, autologous bone marrow, pancreas, or simultaneous kidney/pancreas. The agency pays hospitals for these organ transplants using the ratio of costs-to-charges (RCC) payment method. The agency maintains a list of DRGs which qualify as transplants on the agency's web site.

~~((i) Bariatric surgery performed in hospitals that meet the criteria in WAC 182-550-2301. The agency pays hospitals for bariatric surgery on a per case rate basis for clients in medicaid and state-administered programs when the services are prior authorized and take place at an approved hospital. See WAC 182-550-3000 and 182-550-3470.)~~

AMENDATORY SECTION (Amending WSR 18-12-043, filed 5/30/18, effective 7/1/18)

**WAC 182-550-4800 Hospital payment methods—State-administered programs.** This section does not apply to out-of-state hospitals unless they are border hospitals (critical or noncritical).

(1) The medicaid agency:

(a) Pays for services provided to a client eligible for a state-administered program (SAP) based on SAP rates;

(b) Establishes SAP rates independently from the process used in setting the medicaid payment rates;

(c) Calculates a ratable each year to adjust each hospital's SAP rates for their percentage of community-based dollars to the total revenues for all hospitals;

(d) Calculates an equivalency factor (EF) to keep the SAP payment rates at the same level before and after the medicaid rates were rebased.

(2) The agency has established the following:

(a) SAP diagnosis-related group (DRG) conversion factor (CF) for claims grouped under DRG classifications services;

(b) SAP per diem rates for claims grouped under the following specialty service categories:

(i) Chemical-using pregnant (CUP) women;

(ii) Detoxification;

(iii) Physical medicine and rehabilitation (PM&R); and

(iv) Psychiatric((?)).

~~(c) ((SAP per case rate for claims grouped under bariatric services; and~~

~~(d))) SAP ratio of costs-to-charges (RCC) for claims grouped under transplant services.~~

(3) This subsection describes the SAP DRG CF and payment calculation processes used by the agency to pay claims using the DRG payment method. The agency pays for services grouped to a DRG classification provided to clients eligible for a SAP based on the use of a DRG CF, a DRG relative weight, and a maximum service adjustor. This process is similar to the payment method used to pay for medicaid and CHIP services grouped to a DRG classification.

(a) The agency's SAP DRG CF calculation process is as follows:

(i) The hospital's specific DRG CF used to calculate payment for a SAP claim is the medicaid DRG CF multiplied by the applicable EF multiplied by the ratable;

(ii) For hospitals that do not have a ratable or an EF, the SAP CF is the hospital's specific medicaid CF multiplied by the average EF and the average ratable; and

(iii) For noncritical border hospitals, the SAP DRG CF is the lowest in-state medicaid DRG CF multiplied by the average ratable and the average EF.

(b) The agency calculates the SAP DRG EF as follows:

(i) The hospital-specific current SAP DRG CF is divided by the rebased medicaid DRG CF and then divided by the ratable factor to compute the preliminary EF.

(ii) The current SAP DRG payment is determined by multiplying the hospital specific SAP DRG CF by the AP-DRG version 23 relative weight.

(iii) The current aggregate DRG payment is determined by summing the current SAP DRG payments for all hospitals.

(iv) The hospital projected SAP DRG payment is determined by multiplying the hospital specific current SAP DRG CF by the APR-DRG relative weights and the maximum service adjustor.

(v) The projected aggregate DRG payment is determined by summing the projected SAP program DRG payments for all hospitals.

(vi) The aggregate amounts derived in (b)(iii) and (v) of this subsection are compared to identify a neutrality factor that keeps the projected aggregate SAP DRG payment (based on DRG-APR relative weights) at the same level as the previous aggregate SAP DRG payment (based on AP-DRG relative weights version 23.0).

(vii) The neutrality factor is multiplied by the hospital specific preliminary EF to determine the hospital specific final EF that is used to determine the SAP DRG conversion factors for the rebased system implementation.

(c) The agency calculates the DRG payment for services paid under the DRG payment method as follows:

(i) The agency calculates the allowed amount for the inlier portion of the SAP DRG payment by multiplying the SAP DRG CF by the DRG relative weight and the maximum service adjustor.

(ii) SAP claims are also subject to outlier pricing. See WAC 182-550-3700 for details on outlier pricing.

(4) This subsection describes how the agency calculates the SAP per diem rate and payment for CUP, detoxification, PM&R, and psychiatric services.

(a) The agency calculates the SAP per diem rate for in-state and critical border hospitals by multiplying the hospital's specific medicaid per diem by the ratable and the per diem EF.

(b) The agency calculates the SAP per diem rate for non-critical border hospitals by multiplying the lowest in-state medicaid per diem rate by the average ratable and the average per diem EF.

(c) For hospitals with more than twenty nonpsychiatric SAP per diem paid services during SFY 2011, the agency calculates a per diem EF for each hospital using the individual hospital's claims as follows:

(i) The agency calculates a SAP average payment per day by dividing the total current SAP per diem payments by the total number of days associated with the payments.

(ii) The agency calculates a medicaid average payment per day by dividing the aggregate payments based on the rebased medicaid rates by the total number of days associated with the aggregate payments (same claims used in (c)(i) of this subsection).

(iii) The agency divides the hospital estimated SAP average payment per day in (a) of this subsection by the hospital medicaid average payment per day in (b) of this subsection.

(iv) The agency divides the result of (c)(iii) of this subsection by the hospital specific ratable factor to determine the EF.

(d) For hospitals with twenty or less nonpsychiatric SAP per diem paid services during SFY 2011, the EF is an average for all hospitals. The agency uses the following process to determine the average EF:

(i) The agency calculates a SAP average payment per day by dividing the total current SAP per diem payments for all hospitals by the total number of days associated with the aggregate payments.

(ii) The agency calculates a medicaid average payment per day by dividing the aggregate payments based on the rebased medicaid rates by the total number of days associated with the aggregate payment (same claims used in (d)(i) of this subsection).

(iii) The agency divides the SAP average per day in (a) of this subsection by the medicaid average payment per day in (b) of this subsection.

(iv) The agency divides the result of (d)(iii) of this subsection by the hospital specific ratable factor to determine the EF. The EF is an average based on claims for all the hospitals in the group.

(e) ~~The agency uses a psychiatric EF ((is used))~~ to keep SAP psychiatric rates at the level required by the Washington state legislature. The agency's SAP psychiatric rates are eighty-five and four one hundredths of a percent (85.04%) of the agency's medicaid psychiatric rates. The factor is applied to all hospitals.

(f) The agency calculates the SAP per diem allowed amount for CUP, detoxification, PM&R, and psychiatric services by multiplying the hospital's SAP per diem rate by the agency's allowed patient days.

(g) The agency does not apply the high outlier or transfer policy to the payment calculations for CUP, detoxification, PM&R, and psychiatric services.

~~(5) ((This subsection describes the SAP per case rate and payment processes for bariatric surgery services.~~

~~(a) The agency calculates the SAP per case rate for bariatric surgery services by multiplying the hospital's medicaid per case rate for bariatric surgery services by the hospital's ratable.~~

~~(b) The per case payment rate for bariatric surgery services is an all-inclusive rate.~~

~~(c) The agency does not apply the high outlier or transfer policy to the payment calculations for bariatric surgery services.~~

~~(6))~~ The agency calculates the SAP RCC by multiplying the medicaid RCC by the hospital's ratable.

~~((7))~~ (6) The agency annually establishes ~~((annually))~~ the hospital-specific ratable factor used in the calculation of SAP payment rate based on the most current hospital revenue data available from the department of health (DOH). The agency uses the following process to determine the hospital ratable factor:

(a) The agency adds the hospital's medicaid revenue, medicare revenue, charity care, and bad debts as reported in DOH data.

(b) The agency determines the hospital's community care dollars by subtracting the hospital's low-income disproportionate share hospital (LIDSH) payments from the amount derived in (a) of this subsection.

(c) The agency calculates the hospital net revenue by subtracting the hospital-based physician revenue (based on information available from the hospital's medicare cost report or provided by the hospitals) from the DOH total hospital revenue report.

(d) The agency calculates the preliminary hospital-specific ratable by dividing the amount derived in (b) of this subsection by the amount derived in (c) of this subsection.

(e) The agency determines a neutrality factor by comparing the hospital-specific medicaid revenue (used in (a) of this subsection) multiplied by the preliminary ratable to the hospital-specific medicaid revenue (used in (a) of this subsection) multiplied by the prior year ratable. The neutrality factor is used to keep the projected SAP payments at the same current payment level.

(f) The agency determines the final hospital-specific ratable by multiplying the hospital-specific preliminary ratable by the neutrality factor.

(g) The agency applies to the allowable for each SAP claim all applicable adjustments for client responsibility, any third-party liability, medicare payments, and any other adjustments as determined by the agency.

~~((8))~~ (7) The agency does not pay an SAP claim paid by the DRG method at greater than the billed charges.

~~((9))~~ (8) SAP rates do not apply to the critical access hospital (CAH) program's weighted cost-to-charges, to the long-term acute care (LTAC) program's per diem rate, or to the certified public expenditure (CPE) program's RCC (except as the RCC applies to the CPE hold harmless described ~~((in))~~ under WAC 182-550-4670).

**WSR 19-01-088**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**

[Filed December 18, 2018, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-067.

Title of Rule and Other Identifying Information: The securities division proposes to amend WAC 460-16A-205. The amendments would adopt amended North American Securities Administrators Association (NASAA) statements of policy, adopt the new statement of policy regarding electronic offering documents and electronic signatures, and repeal the adoption of the statement of policy regarding health care facility offerings. The proposed amendments are ministerial updates that do not constitute material changes from existing law or policy.

Hearing Location(s): On January 23, 2019, at 10:00 a.m., at the Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501.

Date of Intended Adoption: January 24, 2019.

Submit Written Comments to: Nathan Quigley, P.O. Box 9033, Olympia, WA 98507, email Nathan.Quigley@dfi.wa.gov, fax 360-704-6463, by January 22, 2019.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, phone 360-902-8760, fax 360-902-0524, TTY 360-664-8126, email Carolyn.Hawkey@dfi.wa.gov, by January 22, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division proposes to amend WAC 460-16A-205 in order to adopt the latest versions of previously adopted NASAA statements of policy, adopt a new statement of policy, and repeal the adoption of an obsolete statement of policy. The proposal would make the following changes:

- Adopt updated versions of the following statements of policy: Corporate securities definitions; loans and other material transactions; preferred stock; promoters' equity investment; specificity in use of proceed; underwriting and selling expenses, underwriter's warrants and selling security holders; unsound financial condition; voting rights, registration of asset-backed securities; registration of commodity pool programs; registration of equipment programs; and registration of oil and gas programs;
- Adopt the new statement of policy regarding use of electronic offering documents and electronic signatures (the division applied the standards set forth in this policy prior to the policy's promulgation); and
- Repeal the adoption of the statement of policy regarding healthcare facility offerings, which was repealed by NASAA when it became obsolete as a result of the fact that health care facility offerings are now structured as municipal bonds and exemptions from registration apply.

Reasons Supporting Proposal: The amendments will provide clarity for securities issuers and counsel by identifying the current versions of these policies and maintain unifor-

mity among the states applying the NASAA statements of policy.

Statutory Authority for Adoption: RCW 21.20.450.

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: [DFI], governmental.

Name of Agency Personnel Responsible for Drafting: Nathan Quigley, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; Implementation: Faith Anderson, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; and Enforcement: William Beatty, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760.

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

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed amendments are ministerial updates that do not constitute material changes from existing law or policy.

December 14, 2018

Gloria Papiez

Director

AMENDATORY SECTION (Amending WSR 11-13-036, filed 6/8/11, effective 7/9/11)

**WAC 460-16A-205 Adoption of NASAA statements of policy.** (1) In order to promote uniform regulation, the administrator adopts the following North American Securities Administrators Association (NASAA) statements of policy for offerings registering pursuant to RCW 21.20.180 or 21.20.210:

(a) Registration of publicly offered cattle feeding programs, as adopted September 17, 1980;

(b) Registration of commodity pool programs, as adopted with amendments through May ((7,2007)) 6, 2012;

(c) Equipment programs, as adopted with amendments through May ((7,2007)) 6, 2012;

(d) Registration of oil and gas programs, as adopted with amendments through May ((7,2007)) 6, 2012;

(e) Real estate investment trusts, as adopted with amendments through May 7, 2007;

(f) Real estate programs, as adopted with amendments through May 7, 2007;

(g) Loans and other material affiliated transactions, as adopted with amendments through ((March 31, 2008)) May 6, 2018;

(h) Options and warrants, as adopted with amendments through March 31, 2008;

(i) Registration of direct participation programs - omnibus guidelines, as adopted with amendments through May 7, 2007;

(j) Mortgage program guidelines, as adopted with amendments through May 7, 2007;

(k) Church bonds, as adopted April 14, 2002;

~~(l)~~ ~~((Health care facility offerings, pertaining to the offering of nonprofit health care facility bonds, as adopted April 5, 1985;~~

~~((m))~~ Corporate securities definitions, as adopted with amendments through ~~((March 31, 2008))~~ May 6, 2018;

~~((n))~~ ~~((m))~~ Impoundment of proceeds, as adopted with amendments through March 31, 2008;

~~((o))~~ ~~((n))~~ Preferred stock, as adopted with amendments through ~~((March 31, 2008))~~ September 11, 2016;

~~((p))~~ ~~((o))~~ Promotional shares, as adopted with amendments through March 31, 2008, except that the term promotional shares shall be limited to those equity securities which were issued within the last three years and that all promotional shares in excess of twenty-five percent of the shares to be outstanding upon completion of the offering may be required to be deposited in escrow absent adequate justification that escrow of such shares is not in the public interest and not necessary for the protection of investors;

~~((q))~~ ~~((p))~~ Registration of asset-backed securities, as adopted with amendments through ~~((May 7, 2007))~~ May 6, 2012, except for offerings registering or required to register pursuant to chapter 460-33A WAC or RCW 21.20.705 through 21.20.855;

~~((r))~~ ~~((q))~~ Promoters' equity investment, as adopted with amendments through ~~((March 31, 2008))~~ September 11, 2016;

~~((s))~~ ~~((r))~~ Specificity in use of proceeds, as adopted with amendments through ~~((March 31, 2008))~~ September 11, 2016;

~~((t))~~ ~~((s))~~ Underwriting expenses, underwriter's warrants, selling expenses, and selling security holders, as adopted with amendments through ~~((March 31, 2008))~~ May 6, 2018;

~~((u))~~ ~~((t))~~ Unsound financial condition, as adopted with amendments through ~~((March 31, 2008))~~ May 6, 2018;

~~((v))~~ ~~((u))~~ Unequal voting rights, as adopted with amendments through ~~((March 31, 2008))~~ September 11, 2016;

~~((w))~~ ~~((v))~~ Guidelines for general obligation financing by religious denominations, as adopted April 17, 1994;

~~((x))~~ ~~((w))~~ Risk disclosure guidelines, as adopted September 9, 2001;

~~((y))~~ ~~((x))~~ Church extension fund securities, as adopted with amendments through April 18, 2004; and

~~((z))~~ ~~((y))~~ Guidelines for cover legends, as adopted October 2, 2004.

(z) Electronic offering documents and electronic signatures, as adopted May 8, 2017.

(2) An offering registering pursuant to RCW 21.20.180 or 21.20.210 that falls within one or more of the statements of policy listed in subsection (1) of this section must comply with the requirements of said statement of policy or policies.

(3) The statements of policy referred to in subsection (1) of this section are found in *CCH NASAA Reports* published by Commerce Clearing House. Copies are also available at the office of the securities administrator.

**WSR 19-01-089**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**

[Filed December 18, 2018, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-018.

Title of Rule and Other Identifying Information: The securities division proposes to amend the exempt transaction rules contained in WAC 460-44A-300, 460-44A-503 and 460-44A-504, to make ministerial updates.

Hearing Location(s): On January 23, 2019, at 11:00 a.m., at the Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501.

Date of Intended Adoption: January 24, 2018.

Submit Written Comments to: Nathan Quigley, P.O. Box 9033, Olympia, WA 98507, email Nathan.Quigley@dfi.wa.gov, fax 360-704-6463, by January 22, 2019.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, phone 360-902-8760, fax 360-902-0524, TTY 360-664-8126, email Carolyn.Hawkey@dfi.wa.gov, by January 22, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division proposes to amend the exempt transaction rules to make ministerial updates. The proposal would make the following changes:

- WAC 460-44A-300 sets forth an exemption from securities registration for offers and sales of securities to accredited investors only and is derived from the North American Securities Administrators Association's (NASAA) model accredited investor exemption. The exemption is available to offerings that are made pursuant to Section 3(b) of the Securities Act of 1933 and has not been updated since Section 3(b) was amended by the JOBS Act of 2012 and the Securities and Exchange Commission (SEC) subsequently amended its rules thereunder in Regulation A. See SEC Release No. 33-9741, available at <https://www.sec.gov/rules/final/2015/33-9741.pdf>. The proposed amendments would correct the reference in the exemption to Section 3 (b)(1) of the amended Securities Act of 1933.
- WAC 460-44A-504 establishes a small offering exemption that may be relied upon in offerings exempt under SEC Rules 147 or 504. This provision has not been updated since SEC created a new intrastate offering exemption in Rule 147A. See SEC Release No. 33-10238, available at <https://www.sec.gov/rules/final/2016/33-10238.pdf>. The proposed amendments would add references to Rule 147A in the exemption; and
- While SEC repealed Rule 505 of Regulation D in 2017 and the division previously repealed its own corresponding exemption in WAC 460-44A-505, the filing requirements set forth in WAC 460-44A-503, as well as the disqualification provision in WAC 460-44A-504, continue to reference WAC 460-44A-505. The proposed updates will remove all references to Rule 505.

Reasons Supporting Proposal: The proposed amendments should be adopted in order to reflect changes in federal law which impact state exempt transaction rules.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.320(9), 21.20.320(17).

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: [DFI], governmental.

Name of Agency Personnel Responsible for Drafting: Nathan Quigley, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; Implementation: Faith Anderson, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; and Enforcement: William Beatty, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760.

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

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed amendments are ministerial updates that do not constitute material changes from existing law or policy.

December 13, 2018

Gloria Papiez

Director

AMENDATORY SECTION (Amending WSR 97-16-121, filed 8/6/97, effective 9/6/97)

**WAC 460-44A-300 Exemption for offers and sales to accredited investors pursuant to a public solicitation.** (1) Any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule and any exemption adopted by the Securities and Exchange Commission pursuant to Section 3 (b)(1) of the Securities Act of 1933 which provides for public solicitation of accredited investors, shall be exempt under RCW 21.20.320(17).

(2) Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors. "Accredited investor" shall have the meaning indicated in WAC 460-44A-501(1).

(3) The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(4) The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under RCW 21.20.190 or 21.20.230 or to an accredited investor pursuant to an exemption available under the Securities Act of Washington, chapter 21.20 RCW. Securities issued under this exemption may

only be resold pursuant to registration or an exemption under the Securities Act of Washington, chapter 21.20 RCW.

(5)(a) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(i) Within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(ii) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(iii) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(iv) Is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered (~~with~~ ~~within~~) within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(b) Subsection (5)(a) of this section shall not apply if:

(i) The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(ii) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment or decree, waives the disqualification; or

(iii) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under (~~subsection (5)~~) (a) of this subsection.

(6)(a) A general announcement of the proposed offering may be made by any means.

(b) The general announcement shall include only the following information, unless additional information is specifically permitted by the securities administrator:

(i) The name, address and telephone number of the issuer of the securities;

(ii) The name, a brief description and price (if known) of any security to be issued;

(iii) A brief description of the business of the issuer in twenty-five words or less;

(iv) The type, number and aggregate amount of securities being offered;

(v) The name, address and telephone number of the person to contact for additional information; and

(vi) A statement that:

(A) Sales will only be made to accredited investors;

(B) No money or other consideration is being solicited or will be accepted by way of this general announcement; and

(C) The securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(7) The issuer, in connection with an offer, may provide information in addition to the general announcement under subsection (6) of this section, if such information:

(a) Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(b) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(8) No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(9) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(10) The issuer shall file with the administrator a notice of transaction, a consent to service of process, a copy of the general announcement, and a fee of three hundred dollars within fifteen days after the first sale in this state.

AMENDATORY SECTION (Amending WSR 14-11-005, filed 5/7/14, effective 6/7/14)

**WAC 460-44A-503 Filing of notice and payment of fee.** (1) An issuer offering or selling securities in reliance on WAC 460-44A-504(~~, 460-44A-505,~~) or 460-44A-506 shall file with the administrator of securities of the department of financial institutions or his or her designee a notice and pay a filing fee as follows:

(a)(i)(A) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(b) and RCW 21.20.327(2) and 21.20.320(1), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506(b) and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(B) For an offering of a security in reliance upon the Securities Act of 1933, Regulation D, Rule 230.506(c) and RCW 21.20.327(2), the issuer shall file a notice on Securities and Exchange Commission Form D marking Rule 506(c) and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of such securities in the state of Washington, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following.

(C) (~~For an offering in reliance on Securities and Exchange Commission Rule 505 and WAC 460-44A-505, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 505 and pay a filing fee of three hundred dollars no later than fifteen days after the first sale of securities in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-505, unless the end of that period falls on a~~

~~Saturday, Sunday or holiday, in which case the due date would be the first business day following;~~

~~(D))~~ For an offering in reliance on Securities and Exchange Commission Rule 504 and WAC 460-44A-504, the issuer shall file the initial notice on Securities and Exchange Commission Form D marking Rule 504 and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance upon WAC 460-44A-504;

~~((E))~~ (D) For an offering in reliance on Securities and Exchange Commission Rule 147 or 147A and WAC 460-44A-504, the issuer shall file the initial notice on Washington Securities Division Form WAC 460-44A-504/Rule 147/Rule 147A and pay a filing fee of fifty dollars no later than ten business days (or such lesser period as the administrator may allow) prior to receipt of consideration or the delivery of a signed subscription agreement by an investor in the state of Washington which results from an offer being made in reliance on the exemption of WAC 460-44A-504;

(ii) The issuer shall include with the initial notice a statement indicating:

(A) The date of first sale of securities in the state of Washington; or

(B) That sales have yet to occur in the state of Washington.

(b) The issuer shall file with the administrator or his or her designee such other notices on Form D as are required to be filed with the Securities and Exchange Commission. For purposes of this section, the initial notice on Securities and Exchange Commission Form D shall consist of the notice of sales on Form D filed in paper or electronic format with the Securities and Exchange Commission through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 C.F.R. Part 232).

(c) If the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the Securities and Exchange Commission, it shall either be manually signed by a person duly authorized by the issuer or a photocopy of a manually signed copy.

(d) By filing for the exemption of WAC 460-44A-504 (~~or 460-44A-505~~), the issuer undertakes to furnish to the administrator, upon request, the information to be furnished or furnished by the issuer under WAC 460-44A-502 (2)(b) or otherwise to any purchaser that is not an accredited investor. Failure to submit the information in a timely manner will be a ground for denial or revocation of the exemption of WAC 460-44A-504 (~~or 460-44A-505~~).

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(a) To correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error;

(b) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable

cable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs solely in the following information:

(i) The address or relationship of the issuer of a related person identified in response to Item 3 of the notice of sales on Form D;

(ii) An issuer's revenues or aggregate net asset value;

(iii) The minimum investment amount, if the change is an increase, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in a decrease of more than ten percent;

(iv) Any address or state(s) of solicitation shown in response to Item 12 of the notice of sales on Form D;

(v) The total offering amount, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent;

(vi) The amount of securities sold in the offering or the amount remaining to be sold;

(vii) The number of nonaccredited investors who have invested in the offering, as long as the change does not increase the number to more than thirty-five;

(viii) The total number of investors who have invested in the offering;

(ix) The amount of sales commissions, finders' fees or use of proceeds for payments to executive officers, directors or promoters, if the change is a decrease, or if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than ten percent; and

(c) Annually, on or before the first anniversary of the filing of the notice of sales on Form D or the filing of the most recent amendment to the notice of sales on Form D, if the offering is continuing at that time.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

**AMENDATORY SECTION** (Amending WSR 08-16-072, filed 7/31/08, effective 9/15/08)

**WAC 460-44A-504 Exemption for limited offers and sales of securities not exceeding \$1,000,000 to not more than twenty purchasers.** (1) Exemption. Offers and sales of securities by an issuer in compliance with the Securities Act of 1933, Regulation D, Rules 230.501 through 230.504 and 230.508 as made effective in Release No. 33-6389, and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825, 33-6863, 33-6949, 33-6996, 33-7300, 33-7644, and 33-8891, or in compliance with the Securities Act of 1933, Rule 230.147 as made effective in Release No. 33-5450, or in compliance with Securities Act of 1933, Rule 230.147A as made effective in Release Nos. 33-10238 and 34-79161, that satisfy the conditions in subsections (2) and (3) of this section shall be exempt under RCW 21.20.320(9).

(2) General conditions to be met. To qualify for exemption under this section, offers and sales must satisfy all the

terms and conditions of WAC 460-44A-501 through 460-44A-503 and 460-44A-508.

(3) Specific conditions to be met.

(a) Limitation on aggregate offering price. The aggregate offering price for an offering of securities under this section, as defined in WAC 460-44A-501(3), shall not exceed \$1,000,000, within or without this state, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this section in reliance on any exemption under RCW 21.20.320(9) or sections 3 (a)(11) or 3(b) of the Securities Act of 1933 or in violation of RCW 21.20.140 or section 5(a) of the Securities Act of 1933.

(b) No commissions. No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in the state of Washington.

(c) Limitation on number of purchasers. There are no more than or the issuer reasonably believes that there are no more than twenty purchasers of securities in this state from the issuer in any offering in reliance on this section.

(d) In all sales to nonaccredited investors in this state under this section the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that, as to each purchaser, one of the following conditions, (i) or (ii) of this subsection, is satisfied:

(i) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the purchaser's net worth, it is suitable. This presumption is rebuttable; or

(ii) The purchaser either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is or they are capable of evaluating the merits and risks of the prospective investment.

(e) Disqualifications. No exemption under this section shall be available for the securities of any issuer if any of the parties described in the Securities Act of 1933, Regulation A, Rule 230.262 is disqualified for any of the reasons listed in ~~((WAC 460-44A-505 (2)(d) unless inapplicable or waived as set forth in WAC 460-44A-505 (2)(d)(vi) and (vii)))~~ Securities Act of 1933, Regulation D, Rule 230.506(d) or WAC 460-17A-040.

(f) Notice filing. The issuer shall file a notice, with a consent to service of process, and pay a filing fee as set forth in WAC 460-44A-503.

(g) Advice about the limitations on resale.

The issuer, at a reasonable time prior to the sale of securities, shall advise each purchaser of the limitations on resale in the manner contained in WAC 460-44A-502 (4)(b).

(4) Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or section of the Securities Act of Washington, however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions for the exemption of this section, the



issuer may claim the availability of any other applicable exemption.

(5) WAC 460-44A-504 is not the exclusive method by which issuers may make offerings under Securities and Exchange Commission Rules 504 (~~and~~), 147 or 147A. For example, offers and sales of an issuer in compliance with Securities and Exchange Commission Rule 504 or Rule 147 or 147A may also be registered by qualification under chapter 21.20 RCW. An issuer that qualifies may elect to register an offering pursuant to the Small Company Offering Registration (SCOR) program as set out in chapter 460-17A WAC.

(6) Issuers are reminded that nothing in these rules alters their obligation under RCW 21.20.010. RCW 21.20.010(2) renders it unlawful "to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading..." In addition, issuers must otherwise comply with the anti-fraud provisions of the federal and state securities laws. No format for disclosure is prescribed. However, issuers may wish to consider the question and answer disclosure format of the SCOR Form of chapter 460-17A WAC in determining the disclosure they make. If the SCOR form is used, the issuer should indicate that the form is being used for an exempt offering under this section rather than in an offering registered under chapter 21.20 RCW and chapter 460-17A WAC.

### WSR 19-01-104

#### PROPOSED RULES

#### EASTERN WASHINGTON UNIVERSITY

[Filed December 18, 2018, 1:43 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 18-21-023.

Title of Rule and Other Identifying Information: Revising chapter 172-90 WAC, Student academic integrity.

Hearing Location(s): On February 7, 2019, at 10:00 a.m., at Eastern Washington University, Main Campus, 526 5th Street, Room 201, Showalter Hall, Cheney, WA 99004.

Date of Intended Adoption: February 22, 2019.

Submit Written Comments to: Joseph Fuxa, Eastern Washington University, Main Campus, 526 5th Street, 314 Showalter Hall, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by February 6, 2019.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 509-359-2874, email jfuxa@ewu.edu, by February 6, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The revisions to chapter 172-90 WAC, Student academic integrity, update titles of personnel and hearing procedures to reflect changes to the student conduct code, chapter 172-121 WAC.

Reasons Supporting Proposal: Modifications are being made to the processes and standards due to changes in practice.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 314 Showalter Hall, 509-359-7496; Implementation and Enforcement: Dr. Mary Cullinan, 214 Showalter Hall, 509-359-6362.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(4).

December 18, 2018

Joseph Fuxa

Labor Relations Manager

AMENDATORY SECTION (Amending WSR 17-11-052, filed 5/15/17, effective 6/15/17)

**WAC 172-90-020 Responsibilities.** (1) (~~Dean: The dean of the university~~) Associate vice president for academic policy (AVP): The AVP is primarily responsible for the university academic integrity program. The (~~dean~~) AVP shall:

- (a) Oversee the academic integrity program;
- (b) Appoint the chair and members of the academic integrity board (AIB);
- (c) Maintain a system for academic integrity reporting and recordkeeping;
- (d) Serve as the final authority in administering the academic integrity program;
- (e) Maintain all academic integrity records per Washington state records retention standards;
- (f) Coordinate academic integrity training for instructors and students, as needed or requested; and
- (g) Develop and/or facilitate development of academic integrity program support resources, including guides, procedures, web presence, training materials, presentations, and similar resources.

Throughout this chapter and unless otherwise stated, the term "~~(dean)~~ AVP," shall mean the (~~dean~~) AVP who is handling the academic integrity case or their designee.

(2) Academic integrity board (AIB): The academic integrity board is a standing committee of the faculty organization. The academic integrity board is responsible for administering and managing academic integrity functions.

(a) The AIB shall:

- (i) Promote academic integrity at EWU;

(ii) Review academic integrity cases, make determinations as to whether a violation occurred, and impose academic and/or institutional sanctions;

(iii) Conduct academic integrity board hearings;

(iv) Assist ~~((dean))~~ the AVP in development of academic integrity program support resources;

(v) Respond, as appropriate, to campus needs related to the academic integrity program;

(vi) Coordinate AIB activities with the ~~((dean))~~ AVP; and

(vii) Continually assess academic integrity process outcomes to ensure equitability of sanctions vis-à-vis violations.

(b) The AIB is appointed by the ~~((dean))~~ AVP, based on recommendations from represented groups (e.g., colleges, library, ASEWU). Board composition or membership may be modified to support university needs with the consent of the ~~((dean))~~ AVP and approval of the provost. At a minimum, AIB membership will include:

(i) Two members from each college, one primary and one alternate. Both must hold or have held instructor rank. The primary and alternate must be from different academic departments. The alternate shall serve when a case involves an instructor in the primary member's own department. The alternate may also serve when the primary member is not available. One of the primary members shall also be designated as vice chair.

(ii) One member representing EWU libraries.

(iii) One student member representing ASEWU.

(iv) One chair (does not vote except to break a tie).

(c) The AIB holds regular meetings every two weeks at fixed times and reviews cases at these meetings. The AIB also conducts AIB hearings, as needed, for academic integrity cases involving possible sanctions of suspension or expulsion. AIB reviews and hearings are held in abeyance during holidays, academic breaks, and other times when no classes are scheduled. AIB reviews and hearings may be canceled in other circumstances with the consent of the AIB chair. Any member who is unavailable shall inform the AIB chair who will arrange for a replacement.

(d) A quorum shall consist of three voting members plus the chair or vice chair.

(3) Instructors shall:

(a) Know and follow the academic integrity rules and policies of the university;

(b) Include, in each course syllabus, a reference to university academic integrity standards and a clear statement that suspected violations will be handled in accordance with those standards;

(c) Hold students responsible for knowing these rules;

(d) Foster an environment where academic integrity is expected and respected;

(e) Endeavor to detect and properly handle violations of academic integrity; and

(f) Support and comply with the determinations of the AIB and the ~~((dean))~~ AVP.

(4) Students shall:

(a) Demonstrate behavior that is honest and ethical in their academic work; and

(b) Know and follow the academic integrity rules and policies of the university.

AMENDATORY SECTION (Amending WSR 18-06-020, filed 2/27/18, effective 3/30/18)

**WAC 172-90-100 Violations and sanctions. (1) Violations:** Violations of academic integrity involve the use or attempted use of any method or technique enabling a student to misrepresent the quality or integrity of any of his or her work. Violations of academic integrity include, but are not limited to:

(a) Plagiarism: Representing the work of another as one's own work;

(b) Preparing work for another that is to be used as that person's own work;

(c) Cheating by any method or means;

(d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research; or

(e) Knowingly furnishing false information to a university official relative to academic matters.

**(2) Classes of violations:**

(a) Class I violations are acts that are mostly due to ignorance, confusion and/or poor communication between instructor and class, such as an unintentional violation of the class rules on collaboration. Sanctions for class I offenses typically include a reprimand, educational opportunity, and/or a grade penalty on the assignment/test.

(b) Class II violations are acts involving a deliberate failure to comply with assignment directions, some conspiracy and/or intent to deceive, such as use of the internet when prohibited, fabricated endnotes or data, or copying answers from another student's test. Sanctions for class II offenses typically include similar sanctions as described for class I violations, as well as a course grade penalty or course failure.

(c) Class III violations are acts of violation of academic integrity standards that involve significant premeditation, conspiracy and/or intent to deceive, such as purchasing or selling a research paper. Sanctions for class III violations typically include similar sanctions as given for class I and II violations, as well as possible removal from the academic program and/or suspension or expulsion.

**(3) Sanctions:** A variety of sanctions may be applied in the event that a violation of academic integrity is found to have occurred. Sanctions are assigned based primarily on the class of the violation and whether or not the student has previously violated academic integrity rules. Absent extenuating circumstances, assigned sanctions are imposed without delay and are not held in abeyance during appeal actions. Sanctions may be combined and may include, but are not limited to:

(a) Verbal or written reprimand;

(b) Educational opportunity, such as an assignment, research or taking a course or tutorial on academic integrity;

(c) Grade penalty for the assignment/test;

(d) Course grade penalty;

(e) Course failure;

(f) Removal from the academic program;

(g) Suspension for a definite period of time; and

(h) Expulsion from the university.

If a student was previously found to have violated an academic integrity standard, the sanction imposed for any subsequent violations should take into account the student's

previous behavior. Sanctions of suspension or expulsion may be noted on a student's transcript.

**(4) Sanctioning authorities:**

(a) Instructors may impose reprimands, educational opportunities, grade penalties, and/or course failure sanctions and may recommend more severe sanctions.

(b) The academic integrity board (AIB) has the authority to impose the same sanctions as an instructor, or to modify any sanctions imposed by the instructor. In addition, the AIB may remove a student from an academic program, with the concurrence of the instructor and the department chair. The AIB may also refer the case for an AIB hearing per WAC 172-90-170 for cases where possible sanctions include suspension or expulsion.

(c) An AIB hearing panel's recommendation to suspend or expel a student will be forwarded to the director of student rights and responsibilities. The director of student rights and responsibilities will ensure the student is provided with a full ~~((council))~~ hearing under the student conduct code, chapter 172-121 WAC. In such cases, a member of the AIB hearing panel will serve as the "complainant" for purposes of the student conduct code process. The AIB hearing panel member will explain the hearing panel's findings and recommendations to the ~~((student discipline council. The student discipline council))~~ conduct review officer. The conduct review officer will make its own factual determinations and may impose a sanction of suspension or expulsion, or a lesser sanction, in accordance with the student conduct code.

AMENDATORY SECTION (Amending WSR 17-11-052, filed 5/15/17, effective 6/15/17)

**WAC 172-90-120 Initiation.** (1) **Reporting:** Each member of the university community is responsible for supporting academic integrity standards. Any person who suspects a violation of these rules is expected to report their suspicion to the course instructor or other appropriate university official. Students are strongly encouraged to report suspected violations to the course instructor, the ~~((dean))~~ AVP, or other university official.

Throughout this chapter, the term "instructor" shall refer to the instructor or other university official who reports a suspected violation under this chapter.

A person who knowingly makes a false allegation that a violation of these rules has occurred, will be subject to disciplinary action as appropriate.

(2) **Authority:** The primary responsibility for bringing a charge of violating academic integrity standards rests with the instructor. Graduate assistants, teaching assistants, research assistants, student workers, exam proctors, online coordinators and any other persons who assist or support an instructor in teaching should report suspected violations of academic integrity standards to the instructor of record.

Instructors may be represented by their academic department chair in cases where the instructor is unavailable or otherwise unable to actively participate in the process.

(3) **Contact student:** If an instructor suspects that a violation has occurred, the instructor may elect to discuss the matter with the student prior to taking any other action.

(4) **Instructor action:** In response to a report or suspicion of violation of academic integrity standards, the instructor has the following options:

(a) Dismiss the matter: If the instructor concludes that there is no violation of these rules, the matter is over.

(b) Resolve internally (internal resolution): If the instructor believes that the student committed a class I violation of academic rules, the instructor may take one or more of the following actions without entering an official violation per subsection (5) of this section:

(i) Instruct the student on academic integrity standards and explain how the student failed to comply with those standards;

(ii) Allow the student to modify or redo the assignment; and/or

(iii) Provide the student with an educational opportunity to reiterate academic integrity (such as an assignment, research, course or tutorial on academic integrity).

Note: If an instructor intends to impose any sanction that will affect the student's course grade, he/she must initiate the academic integrity process; internal resolution may not be used in such cases.

If the student does not cooperate with the internal resolution, the instructor should initiate the formal academic integrity process by reporting the violation as described in subsection (5) of this section.

(c) Initiate the academic integrity process: If the instructor believes that the student violated academic integrity standards and internal resolution is not appropriate, the instructor shall initiate the academic integrity process by reporting the violation to the ~~((dean))~~ AVP per institutional practice.

(5) **Report violation:** To initiate an academic integrity action, the instructor provides information regarding the violation to the ~~((dean))~~ AVP, including:

(a) A description of the alleged violation;

(b) A summary of any conversations the instructor has had with the student regarding the violation;

(c) The sanction(s) imposed and/or recommended by the instructor; and

(d) The method of resolution desired by the instructor (i.e., summary process, AIB review, or AIB hearing).

When reporting the violation, the instructor may also submit documents (e.g., syllabus, test, essay, etc.) that are pertinent to the violation being reported. Alternatively, the instructor may elect to defer providing such documents unless or until the materials are later requested by the student, ~~((dean))~~ AVP, or the AIB.

Instructors should initiate this process within seven calendar days after becoming aware of the suspected violation. In cases where the student has agreed to certain conditions to resolve the matter internally, per subsection (4)(b) of this section, and the student has failed to comply with those conditions, the instructor may initiate the process up to seven calendar days after the student has failed to meet a resolution condition.

(6) ~~((Dean))~~ AVP review. After a violation has been reported, the ~~((dean))~~ AVP will determine whether the summary process, AIB review process, or AIB hearing process will be used.

In cases where the student has any prior violation, the ((~~dean~~)) AVP must process the case for AIB review under WAC 172-90-160, or AIB hearing under WAC 172-90-170.

AMENDATORY SECTION (Amending WSR 17-11-052, filed 5/15/17, effective 6/15/17)

**WAC 172-90-140 Summary process.** (1) **Initiation:** The summary process may be initiated when:

- (a) The instructor and student both agree to the summary process;
- (b) The ((~~dean~~)) AVP agrees that the summary process is appropriate to the circumstances;
- (c) The student has no prior violations of academic integrity; and
- (d) The alleged behavior would most likely not warrant a sanction of suspension or expulsion.

(2) **Student notification:** The ((~~dean~~)) AVP will notify the student of the violation, proposed sanctions, and of their response options. Notification will be made to the student's official university email address. If the student is no longer enrolled in the university, the ((~~dean~~)) AVP shall send the notification to the student's last known address. Notification will include:

- (a) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;
- (b) Documents related to the alleged violation;
- (c) A description of the university's academic integrity rules and processes, including a list of possible sanctions;
- (d) A description of the student's options; and
- (e) Contact information for the ((~~dean's~~)) AVP's office where the student can request further information and assistance.

(3) **Student response options:**

(a) **Concur:** The student may accept responsibility for the stated violation and accept all sanctions imposed and/or recommended by the instructor. The student indicates their acceptance by following the instructions provided with the notification. The ((~~dean~~)) AVP will coordinate sanctioning with the instructor and/or the AIB as needed.

(b) **Conference:** If a conference had not already occurred, the student may request to meet with the instructor in order to discuss the alleged violation and/or proposed sanction(s). If the instructor declines the request, the matter will be referred to the AIB for further review and action. The instructor and student may discuss the matter by any means that is agreeable to both (e.g., in-person, telephonically, or via email). The student shall contact the instructor to arrange a discussion time/method.

(i) In arranging a conference, the instructor shall make a reasonable effort to accommodate the student's preferences, but is not obligated to meet with the student outside of normal "office" hours. If the student and instructor cannot agree on a date/time to meet, the instructor or student may refer the matter to the AIB for review and action.

(ii) During a conference, the instructor and student will attempt to reach an agreement regarding the allegation and sanction(s).

(iii) If the student and instructor come to an agreement, the instructor will inform the ((~~dean~~)) AVP of the outcome. The ((~~dean~~)) AVP will coordinate sanctioning with the instructor and/or the AIB as needed.

(iv) If the student and the instructor cannot come to an agreement within seven instruction days, the instructor will inform the ((~~dean~~)) AVP and the matter will then be referred for AIB review and action.

(c) **AIB review:** The student may request that the matter be referred to the AIB for review and further action.

(d) **Failure to respond:** If the student does not respond to the notification within three instruction days, the ((~~dean~~)) AVP will send another notification to the student. Failure of the student to respond to the second notification within three instruction days will be treated as an admission of responsibility and acceptance of the proposed sanctions. The ((~~dean~~)) AVP will coordinate with the instructor to impose the appropriate sanction(s).

AMENDATORY SECTION (Amending WSR 17-11-052, filed 5/15/17, effective 6/15/17)

**WAC 172-90-160 Academic integrity board review process.** (1) **Initiation:** The AIB review process will be initiated when:

- (a) The instructor or student requests AIB review;
- (b) The instructor refers the matter to the AIB because the instructor and student could not agree to a conference date/time or did not reach an agreement during a conference; or
- (c) The ((~~dean~~)) AVP determines that the AIB review process is appropriate to the circumstances.

(2) **Scheduling:** Within five instruction days of determining that an AIB review is in order, the ((~~dean~~)) AVP shall schedule a review for the next available meeting of the AIB.

(3) **Notification:** The ((~~dean~~)) AVP will notify the student, instructor, and AIB chair. Notification will include:

(a) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, any such information and documents that were previously provided to the student are not required to be included in this notification. Also, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;

(b) The date/time of the AIB review;

(c) Instructions on how to submit documents, statements, and other materials for consideration by the AIB;

(d) A clear statement that the AIB review is a closed process (no student, instructor or person other than the board is present at the review);

(e) A description of the specific rules governing the AIB review process;

(f) A description of the university's academic integrity rules and processes; and

(g) Contact information for the ((~~dean's~~)) AVP's office where the student and/or instructor can request further infor-

mation and assistance. Notifications will strongly encourage the student to contact the ((~~dean~~)) AVP to ensure that the student understands the process, the violation, and the potential sanctions.

(4) **Student and instructor response:** The student must prepare a written statement and submit the statement to the ((~~dean's~~)) AVP's office within three instruction days after receiving the AIB review notice. The student may include any relevant written documentation, written third-party statements, or other evidence deemed relevant to the student's interests. Unless already provided, the instructor should submit the syllabus, the relevant test/assignment, and other materials that are pertinent to the violation to the ((~~dean's~~)) AVP's office.

(5) **Failure to respond:** If the student does not respond to the notification of the AIB review within three instructional days, the ((~~dean~~)) AVP will send another notification to the student. Failure of the student to respond to the second notification within three instruction days will be treated as an admission of responsibility and acceptance of the proposed sanctions. The ((~~dean~~)) AVP will coordinate sanctioning with the instructor and/or the AIB as needed. If a recommended sanction requires higher level authority to impose, the AIB will proceed with a hearing.

(6) **Proceedings:** The board's responsibility is to review the statements and other materials provided by each party, review other relevant records, information, or materials, and make a determination as to whether the alleged academic integrity violation occurred. The board primarily reviews written evidence. Neither the student nor the instructor is permitted to attend the AIB review. The board may, at its discretion, consult with the instructor, the student or others as deemed appropriate or necessary. All evidence collected in this process will be made available to the student and/or instructor upon request.

(7) **Sanctions:** The board will determine what, if any, sanctions will be imposed. The board may impose the same sanctions assigned and/or recommended by the instructor, or may impose greater or lesser sanctions. If the student has any previous violation(s) of academic integrity standards, the AIB may increase the sanction imposed to account for repeat offenses. If the board decides to pursue sanctions that include suspension or expulsion, the board shall initiate an AIB hearing per WAC 172-90-170.

(8) **Conclusion:** The board should conclude its review and issue a decision within thirty days after the violation was initially reported. The ((~~dean~~)) AVP shall notify the student and instructor of the board's decisions, along with the right to request reconsideration.

(9) **Requests for review:** Either the student or the instructor may request reconsideration by the ((~~dean~~)) AVP by submitting a request in writing to the ((~~dean~~)) AVP within twenty-one days after the board issues its written decision. The ((~~dean~~)) AVP shall allow the student and the instructor an opportunity to respond in writing to the request for review. The student and instructor's responses, if any, must be submitted within five instructional days of the request for review. After reviewing the responses and materials considered by the board, the ((~~dean~~)) AVP shall issue a decision in writing within twenty days of receipt of the request for

review. The decision must include a brief statement of the reasons for the ((~~dean's~~)) AVP's decision and notice that judicial review may be available. All decisions of the ((~~dean~~)) AVP are final and no appeals within the university are permitted. Judicial review may be available under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 17-11-052, filed 5/15/17, effective 6/15/17)

**WAC 172-90-170 Academic integrity board hearing.** AIB hearings will only be conducted when the institution is pursuing sanctions that include either suspension or expulsion. The AIB hearing provides the instructor and the student with the opportunity to present evidence and witnesses.

(1) **Scheduling and notification:**

(a) Initiation: The AIB hearing process will be initiated when the ((~~dean~~)) AVP or the AIB determines that the alleged violation may involve a possible sanction of suspension or expulsion.

(b) Scheduling: Within five instruction days of determining that an AIB hearing is in order, the ((~~dean~~)) AVP shall schedule the hearing. The student must receive at least seventy-two hours' notice as to the time and place of the hearing. The ((~~dean~~)) AVP may coordinate with the parties to facilitate scheduling, but is not required to do so.

(c) Notification: The ((~~dean~~)) AVP will notify the student, instructor, and AIB hearing panel members. Notification will include:

(i) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, any such information and documents that were previously provided to the student are not required to be included in the notification sent to the student. Also, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other students' education records;

(ii) A description of the university's academic integrity rules and processes, including any possible sanctions;

(iii) The date, time, and place of the AIB hearing;

(iv) Instructions on how to submit documents, statements, and other materials for consideration by the AIB hearing panel;

(v) A description of the specific rules governing the AIB hearing process;

(vi) A description of the student's options; and

(vii) Contact information for the ((~~dean's~~)) AVP's office where the student and/or instructor can request further information and assistance. Notifications will strongly encourage the student to contact the ((~~dean~~)) AVP to ensure that the student understands the process, the violation, and the potential sanctions.

(2) **General provisions:**

(a) All academic integrity board hearings are brief adjudicative proceedings in accordance with WAC 172-108-010 and shall be conducted in an informal manner.

(b) Nonjudicial proceedings: Formal rules of procedure, evidence, and/or technical rules, such as are applied in criminal or civil courts, do not apply to AIB hearings.

(c) **Hearing authority:** When scheduling an AIB hearing, a member of the AIB will be designated as hearing authority. The hearing authority exercises control over hearing proceedings. All procedural questions are subject to the final decision of the hearing authority.

(d) **Hearing panel composition:** In addition to the hearing authority, an AIB hearing panel shall consist of three voting members of the AIB.

(e) **Closed hearings:** All AIB hearings will be closed. Admission of any person, other than the instructor and the student involved, to an AIB hearing shall be at the discretion of the hearing authority.

(f) **Consolidation of hearings:** In the event that one or more students are charged with an academic integrity violation arising from the same occurrence, the university may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

**(3) Appearance:**

(a) **Failure to appear:** The student is expected to attend the AIB hearing. In cases where proper notice has been given but the student fails to attend an AIB hearing, the hearing panel shall decide the case based on the information available.

(b) **Disruption of proceedings:** Any person, including the student, who disrupts a hearing, may be excluded from the proceedings.

(c) **Alternative methods of appearance.** In the interest of fairness and expedience, the hearing authority may permit any person to appear by telephone, written statement, or other means, as appropriate.

(d) The instructor may attend the hearing but is not required to do so. The instructor's report of the violation and all associated evidence shall constitute the appearance of the instructor.

(4) **Advisors:** The instructor and the student may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the instructor or the student that employed the advisor;

(b) The advisor may be an attorney;

(c) The instructor and the student are responsible for presenting their own case and, therefore, advisors may not speak or participate directly in any AIB hearing proceeding. The instructor and/or the student may, however, speak quietly with their advisor during such proceedings; and

(d) If an attorney is used as an advisor, the person using the attorney shall inform the AIB hearing authority of their intent to do so at least two business days prior to the hearing.

(5) **Review of evidence:** The student and the instructor may request to view material related to the case prior to a scheduled hearing by contacting the ~~((dean))~~ AVP. To facilitate this process, the party should contact the ~~((dean))~~ AVP as early as possible prior to the scheduled hearing. The ~~((dean))~~ AVP shall make a reasonable effort to support the request to the extent allowable by state and federal law.

**(6) Evidence:**

(a) **Evidence:** Pertinent records, exhibits and written statements may be accepted as information for consideration

by the hearing panel. However, AIB hearings are not bound by the rules of evidence observed by courts. The hearing authority may exclude incompetent, irrelevant, immaterial or unduly repetitious material.

(b) The student and the instructor have the right to view all material presented during the course of the hearing.

(7) **Standard of proof:** The hearing panel shall determine whether the student violated student academic integrity standards, as charged, based on a preponderance of the evidence.

A preponderance means, based on the evidence admitted, whether it is more probable than not that the student violated academic integrity standards.

**(8) Witnesses:**

(a) The instructor, student, and hearing authority may present witnesses at AIB hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing.

(c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

**(9) Questioning:**

(a) The instructor and the student may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the hearing authority. The hearing authority may ask such questions, but is not required to do so. The hearing authority may reject any question which it considers inappropriate, irrelevant, immaterial or unduly repetitious. The hearing authority has complete discretion in determining what questions will be asked during the hearing.

(b) During an AIB hearing, only the hearing authority may pose questions to persons appearing before them.

(c) The hearing authority may ask their own questions of any witness called before them.

**(10) Deliberations and sanctions:**

(a) Within seven days after the hearing, the AIB hearing panel shall meet in closed session, without either of the parties present, and determine by majority vote whether, by a preponderance of the evidence, the accused violated academic integrity standards. If the hearing panel determines that the accused violated academic integrity standards, the panel shall then determine, by majority vote, what sanctions shall be imposed. This session may take place immediately following the hearing or at another time within the seven days following the hearing.

(b) In determining what sanctions shall be imposed, the hearing panel may consider the evidence presented at the hearing as well as any information contained in the student's records.

(11) **Notification:** If the panel determines that suspension or expulsion is appropriate, they will forward that recommendation to the director of student rights and responsibilities to conduct a hearing under the student conduct code. If the panel is not recommending suspension or expulsion,

they shall notify the ~~((dean))~~ AVP of the sanctions to be imposed.

(12) ~~((Dean))~~ AVP:

(a) If the AIB panel recommends suspension or expulsion, the ~~((dean))~~ AVP will appoint a member of the AIB hearing panel to serve as the complainant for purposes of the student conduct proceeding and will forward the records used during the academic integrity proceeding to the director of student rights and responsibilities. If the AIB panel does not recommend suspension or expulsion, the ~~((dean))~~ AVP shall impose the sanctions determined by the AIB panel.

(b) The ~~((dean))~~ AVP shall notify the student and the instructor of the hearing panel's decision, the sanctions to be imposed, and of the right to appeal.

(13) **Appeals of AIB hearing determinations:** Either the student or the instructor may request reconsideration by the provost by submitting a request in writing to the provost within twenty-one days after the hearing panel issues its decision. The provost shall allow the student and the instructor an opportunity to respond in writing to the request for review. The student and instructor's responses, if any, must be submitted within five instructional days of the request for review. After reviewing the responses and materials considered by the hearing panel, the provost shall issue a decision in writing within twenty days of receipt of the request for review. The decision must include a brief statement of the reasons for the provost's decision and notice that judicial review may be available under chapter 34.05 RCW. All decisions of the provost are final and no appeals are permitted.

If the AIB recommended a suspension or expulsion and the case was forwarded for a full hearing under the student conduct code, the imposition of a sanction of suspension or expulsion may be appealed in accordance with the appeals process set forth in WAC 172-121-130. If the AIB imposed a sanction in addition to recommending a suspension or expulsion, such as removal from an academic program, such sanction may be appealed to the provost in accordance with this section. The timeline for filing an appeal with the provost commences at the time of service of the conduct review officer's decision under the student conduct code.

AMENDATORY SECTION (Amending WSR 17-11-052, filed 5/15/17, effective 6/15/17)

**WAC 172-90-180 Administration.** After the resolution process, the ~~((dean))~~ AVP will coordinate sanctions and administrative actions, including:

- (1) Notifying the parties of the results in writing;
- (2) Creating or updating the student's academic disciplinary record;
- (3) Updating academic integrity reporting and record-keeping systems;
- (4) Coordinating sanctioning; and
- (5) Referring cases to the student disciplinary council as needed.

AMENDATORY SECTION (Amending WSR 17-11-052, filed 5/15/17, effective 6/15/17)

**WAC 172-90-200 Failing grade.** A sanction of a failing course grade is recorded on the transcript as an "XF" and

indicates a failure of the course due to violation of academic integrity standards. An XF is counted as a 0.0 for purposes of grade point average calculation.

(1) To petition to have an XF grade changed to an "F" (0.0), a student must submit a written request to the ~~((dean))~~ AVP. Requests will generally not be considered unless the following conditions are met:

(a) At least one year has passed since the XF grade was entered;

(b) The student has had no other violations of academic integrity standards since the XF; ~~((and))~~

(c) The student has successfully completed a university sponsored noncredit seminar on academic integrity; or, for a person no longer enrolled at the university, an equivalent educational activity as determined by the AIB; and

(d) The student has not had any other XF grades converted while attending the university.

(2) The ~~((dean))~~ AVP will review the case and may consult with the referring instructor or academic unit head who originally reported the violation(s). If the ~~((dean))~~ AVP denies the request, the student may submit a new request one year later.

**WSR 19-01-107**  
**PROPOSED RULES**  
**PARKS AND RECREATION**  
**COMMISSION**

[Filed December 18, 2018, 4:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-18-028.

Title of Rule and Other Identifying Information: Chapter 352-12 WAC, Moorage and use of marine and inland water facilities, additional language and language clarification to definitions, section repeal, and correct specified RCW reference.

Chapter 352-20 WAC, Use of motor driven vehicles in state parks—Parking restrictions—Violations, additional language and language clarification.

Chapter 352-32 WAC, Public use of state park areas, additional language and language clarification to park periods, fires and campfires, games or activities, aircraft, SEPA review, senior citizen, disability, and disabled veteran passes, foster parent program, and correct specified RCW reference.

Chapter 352-37 WAC, Ocean beaches, additional language and language clarification to definitions, park periods, fires and campfires, games or activities, SEPA review, and correct specified RCW reference.

Hearing Location(s): On January 24, 2019, at 9:00 a.m., at Titlow Lodge, 8425 6th Avenue, Tacoma, WA 98465.

Date of Intended Adoption: January 24, 2019.

Submit Written Comments to: Heather Colwell, 1111 Israel Road S.W., Olympia, WA 98504-2650, email Heather.Colwell@parks.wa.gov, fax 360-586-0355, by January 10, 2018 [2019].

Assistance for Persons with Disabilities: Contact Becki Ellison, phone 360-902-8502, fax 360-586-0355, TTY 1-

800-833-6388, email becki.ellison@parks.wa.gov, by January 4, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: See Title of Rule above.

Reasons Supporting Proposal: This is part of our annual review process.

Statutory Authority for Adoption: Chapter 79A.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Statutory language needs to be updated in multiple sections of chapters 352-12, 352-32, and 352-37 WAC to reflect chapter 79A.05 RCW.

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Heather Colwell, 1111 Israel Road S.W., Tumwater, WA 98504-2650, 360-902-8507; Implementation and Enforcement: Robert Ingram, 1111 Israel Road S.W., Tumwater, WA 98504-2650, 360-902-8615.

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

A cost-benefit analysis is not required under RCW 34.05.328. No cost involved, clarification only.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

December 18, 2018

Valeria Veasley  
Management Analysis

AMENDATORY SECTION (Amending WSR 04-01-068, filed 12/12/03, effective 1/12/04)

**WAC 352-12-005 Definitions.** As used in this chapter, the ~~((following words and terms have the meanings indicated))~~ terms below mean the following, unless the context clearly requires otherwise:

(1) "Commercial vessel" ~~((shall))~~ means a vessel ~~((which))~~ that is used, rigged, or licensed for any commercial use or purpose, but ~~((shall))~~ does not include vessels operated within the terms of a concession lease or agreement with the commission.

(2) "Commission" ~~((shall))~~ means the Washington state parks and recreation commission.

(3) "Designated fee facility" ~~((shall))~~ means any facility designated as a fee facility by the director or designee.

(4) "Director" ~~((shall))~~ means the director of the Washington state parks and recreation commission.

(5) "Facility" ~~((shall))~~ means state watercraft launches, park floats, piers, mooring buoys, docks, pilings, and linear moorage facilities.

(6) "Length" ~~((shall))~~ means the overall length of a vessel as measured in a straight line parallel to the keel from the foremost part of the vessel to the aftermost part, not including bowsprit or bumkin or as shown on vessel's state or coast guard registration certificate.

(7) "Manager or ranger" ~~((shall))~~ means a duly appointed Washington state parks ranger, or agent of the commission, who is vested with police powers under RCW 79A.05.160.

(8) "Night" ~~((shall))~~ means the period between 1 p.m. and 8 a.m.

(9) "Vessel" ~~((shall))~~ means watercraft of every description, used or capable of being used as a means of transportation on the water.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 352-12-060 Penalties.

AMENDATORY SECTION (Amending WSR 92-19-098, filed 9/17/92, effective 10/18/92)

#### **WAC 352-20-020 Motor vehicles on roads and trails.**

(1) No person shall operate any motor vehicle on a trail in any state park area unless such trail has been specifically designated and posted for such use.

(2) Subject to the provisions of subsection (1) of this section, no person shall operate a motor vehicle within the boundaries of a state park area except on roads, streets, highways, parking lots, parking areas, ATV areas or snowmobile trails and areas authorized for such use.

(3) No person shall operate a motor vehicle on any identified winter recreation groomed or ungroomed trail during official winter closures except snow mobiles on authorized snow mobile trails.

(4) Except as provided in WAC 352-20-070, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 13-17-037, filed 8/13/13, effective 9/13/13)

**WAC 352-32-050 Park periods.** (1) The director or designee ~~((shall establish))~~ establishes for each state park area, according to existing conditions, times, and periods when it will be open or closed to the public. Such times and periods shall be posted at the entrance to the state park area affected and at the park office. No person ~~((shall))~~ may enter or be present in a state park area after the posted closing time except:

(a) Currently registered campers who are camping in a designated campsite or camping area;

(b) Guests of a currently registered camper who may enter and remain until 10:00 p.m.;

(c) Guests of a state park employee;

(d) Technical rock climbers who bivouac on vertical climbing routes not otherwise closed to public use;

(e) When granted prior authorization by the director or designee;



(f) When attending or participating in approved special events or activities that are scheduled outside of posted operating hours.

(2) The director or designee may, for a specified period or periods of time, close any state park area to public access if the director or designee concludes that such a closure is necessary for the protection of the health, safety, and welfare of the public, park visitors or staff, or park resources.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 04-01-067, filed 12/12/03, effective 1/12/04)

**WAC 352-32-090** ~~((Games or))~~ **Damaging or injurious activities.** ~~((Playing games and/or))~~ Engaging in activities in a manner ~~((and/or location which))~~ or at a location that subjects people or personal property, ~~((the park resource or))~~ park resources, or park facilities to ~~((risk of))~~ injury or damage ~~((shall be))~~ is prohibited. Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 12-22-031, filed 10/31/12, effective 12/1/12)

**WAC 352-32-125 Fires and campfires.** All fires, except campfires, fires for stoves, candles, torches, barbecues and charcoal, are prohibited in state parks. Campfires are restricted to within the designated campfire pit, ring or other provided campfire enclosure and the flame must be no higher than two feet. On ocean beaches, ~~((campfires))~~ recreational fires must be at least one hundred feet from the dunes, no more than four feet in diameter and no more than four feet high. No ~~((campfires))~~ fires are allowed on any shellfish bed. Park rangers may impose additional restrictions on fires for the protection of the health, safety, and welfare of the public, park visitors or staff, or for the protection of park resources.

At Crystal Springs and Easton Reload sno-parks all campfires must be restricted to portable fire receptacles not to exceed three feet in diameter and must be at least six inches off the ground, and are only permitted when the sno-parks are open for winter recreation access.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 17-15-082, filed 7/17/17, effective 8/17/17)

**WAC 352-32-130 Aircraft.** (1) No aircraft shall land on or take off from any body of water or land area in a state park area not specifically designated for landing aircraft. This provision does not apply to official aircraft used in the performance of search and rescue missions, medical emergencies, law enforcement activities, emergency evacuations or fire-fighting activities. It also does not apply in cases where the director or designee specifically authorizes such landings or take offs, in writing, associated with the operational, or administrative needs of the agency or state.

(2) Individuals who have complied with the registration process provided or who have obtained a special recreation event permit pursuant to WAC 352-32-047 may launch and

land paragliders and hang gliders in state park areas specifically designated by the director or designee as available for paragliding and hang gliding. Prior to any such designation, the director or designee shall advertise and conduct a public meeting in the region where the park is located. The director or designee shall consider the potential impacts of paragliding and hang gliding in the proposed area including, but not limited to the following factors: The degree of conflict paragliding and hang gliding may have with other park uses, public safety issues, and any potential damage to park resources/facilities. Any park designated for paragliding and hang gliding shall be conspicuously posted as such by the agency.

(3) Individuals paragliding and hang gliding in state parks must:

(a) Comply with the registration process provided for such purposes;

(b) Observe all applicable laws and regulations;

(c) Never destroy or disturb park facilities, natural features, or historical or archaeological resources;

(d) Conduct themselves with thoughtfulness, courtesy and consideration for others, and not interfere with other recreational activities;

(e) Conduct themselves in compliance with the following basic safety regulations:

(i) Comply with specific site operational restrictions that are posted;

(ii) Fly in a manner consistent with the pilot rating held;

(iii) Preplanned landings should be made in areas no smaller than forty feet wide by one hundred feet long;

(iv) Make preflight checks of weather, equipment and site conditions;

(v) Observe all published traffic and right of way flight guidelines, including yielding right of way to all aircraft;

(vi) Wear protective clothing, headgear, Coast Guard approved flotation gear, reserve parachute, supplemental oxygen and communication equipment as appropriate for conditions;

(vii) Fly in a manner that does not create a hazard for other persons or property;

(viii) Fly only during daylight hours, or hours otherwise specified by posting at the site;

(ix) Do not fly over congested areas of parks or open air assembly of persons;

(x) Fly only in designated areas of parks;

(xi) Fly with visual reference to the ground surface at all times;

(xii) Do not tether paragliders or hang gliders to the ground or other stable ~~((nonmovable))~~ immovable object.

(f) Not fly while under the influence of alcohol or drugs.

(4) Except as provided in subsection (5) of this section, individuals flying remote controlled aircraft may do so only within flying areas designated by the director or designee and only when following the remote controlled aircraft management plan approved by the director or designee and posted for that designated area.

(a) Prior to designating any remote controlled aircraft flying area, the director or designee shall advise and conduct a public meeting in the region where the park is located. The director or designee shall consider the potential impacts of remote controlled aircraft flying in the proposed area includ-

ing, but not limited to, the following factors: The degree of conflict remote controlled aircraft flying may have with other park uses, public safety issues, and any potential damage to park resources/facilities. Any park area designated for remote controlled aircraft flying shall be conspicuously posted as such by the director or designee.

(b) The director or designee shall establish a committee to advise park staff on park management issues related to remote controlled aircraft flying for each state park area designated as a remote controlled aircraft flying area.

(c) Each state park area with an established advisory committee, which includes remote controlled aircraft flyers will have an approved management plan which will specify remote controlled aircraft flying restrictions concerning types of aircraft, flying hours, identified approved flying zones, identified runways for take-offs and landings, engine muffler requirements, use of and posting of radio frequency, fuel spills and cleanup. The director or designee shall ensure that any remote controlled aircraft flying restrictions contained in the remote controlled aircraft flying management plan are conspicuously posted at the entrance of the affected park area.

(d) The director or designee may permanently, or for a specified period or periods of time, close any designated flying area to remote controlled aircraft flying if the director or designee concludes that a remote controlled aircraft flying closure is necessary for the protection of the health, safety, and welfare of the public, park visitors or staff, or park resources. Prior to closing any designated flying area to remote controlled aircraft flying, the director or designee shall hold a public meeting near the state park area to be closed to remote controlled aircraft flying. Prior notice of the meeting shall be published in a newspaper of general circulation in the area and at the park at least thirty days prior to the meeting. In the event that the director or designee or park manager determines that it is necessary to close a designated flying area immediately to protect against an imminent and substantial threat to the health, safety, and welfare of the public, park visitors or staff, or park resources, the director or designee or park manager may take emergency action to close a state park area to remote controlled aircraft flying without first complying with the publication and meeting requirements of this subsection. Such emergency closure may be effective for only so long as is necessary for the director or designee to comply with the publication and meeting requirements of this subsection. The director or designee shall ensure that any designated flying area closed to remote controlled aircraft flying is conspicuously posted as such at the entrance of the affected park area.

(5) Remote controlled aircraft may be flown in any state park area only pursuant to ((written permission from)) issuance of permit by the director or designee. A remote controlled aircraft is flown in a state park area when the operator is within the state park area while flying the remote controlled aircraft or where the remote controlled aircraft takes off from or lands on the state park area.

(a) In granting such ((permission)) permit, the director or designee may specify time, geographic, and elevation restrictions, and any other restrictions necessary to protect the public, park visitors or staff, or park resources. While operating a

remote controlled aircraft (~~pursuant to written permission under this subsection~~), the operator (~~shall~~) must be in possession of a copy of the written permission and (~~shall~~) will produce it upon request by parks staff. Permission granted by the director or designee to fly a remote controlled aircraft (~~is subject to rescission as necessary~~) may be rescinded at any time for permittee's failure to comply, to protect the public, park visitors or staff, or park resources.

(b) Permit applications must be submitted at least sixty days in advance of the proposed activity to allow for staff review, agency coordination, and to comply with SEPA review requirements. The sixty-day application filing requirement may be waived in extenuating circumstances.

(c) The permittee must pay any fees published by state parks for the use of park lands or facilities. The director or designee will determine the need for any fees necessary to cover costs incurred by the agency, as well as the need for any bond, damage deposit, or liability insurance arising from any potential hazards associated with the character of the event. Any such fees, bond, damage deposit, or liability insurance must be provided prior to the issuance of the permit.

(6) Any violation of this section, including any failure to abide by a conspicuously posted remote controlled aircraft flying restriction or failure to abide by the terms of written permission to fly remote controlled aircraft, is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 11-17-067, filed 8/16/11, effective 9/16/11)

**WAC 352-32-251 Limited income senior citizen, disability, and disabled veteran passes.** (1)(a) Persons who are senior citizens, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past three consecutive months (~~shall~~) will, upon application to the Washington state parks and recreation commission accompanied by either a copy of a federal income tax return filed for the previous calendar year, or a senior citizen property tax exemption pursuant to RCW 84.36.381, or (~~a notarized affidavit of income on a form provided by the commission~~) Social Security Administration form SSA-1099, receive a five-year limited income senior citizen pass at no charge, which entitles the holder's camping party to free use of trailer dump stations, watercraft launch sites, day-use vehicle access to state parks and to a 50 percent reduction in the campsite fee, or moorage fee as published by state parks. (~~Limited income senior citizen passes shall remain valid so long as the pass holder meets eligibility requirements.~~)

(b) Proof submitted to the commission for the return of a senior citizen pass surrendered upon request to a commission employee who has reason to believe the user does not meet the eligibility criteria (~~shall~~) will be the same as listed in subsections (1) and (5) of this section for original pass issuance.

(2) Persons who are:

(a) Permanently disabled, legally blind, or profoundly deaf, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the

past three consecutive months ~~((shall))~~ will, upon application to the commission, receive a five-year disability pass at no charge;

(b) Temporarily disabled and who meet the eligibility requirements of RCW 79A.05.065 and have been residents of Washington state for at least the past three consecutive months ~~((shall))~~ will, upon application to the commission, receive a one-year disability pass at no charge; and

(c) Residents of Washington who have been issued a ~~((card, decal (placard)))~~ disabled parking ID card, or special license plate for a permanent disability under RCW 46.16.-381 ~~((shall))~~ will be entitled, along with the members of their camping party to free use of trailer dump stations, watercraft launch sites, day-use vehicle access to parks and to a 50 percent reduction in the campsite fee, or moorage fee as published by state parks.

(3) Persons who are veterans, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past three consecutive months ~~((shall))~~ will, upon application to the commission, receive a lifetime disabled veteran pass at no charge. Pass holders must provide proof of continued residency as determined by the state parks director or director's designee. The pass entitles the holder's camping party to free use of a state park campsite, day-use vehicle access to state parks, trailer dump station, watercraft launch site, moorage facility, and reservation service.

(4) Applications for limited income senior citizen, disability, and disabled veteran passes ~~((shall))~~ will be made on forms prescribed by the commission.

(5) Verification of age ~~((shall))~~ will be by original or copy of a birth certificate, notarized affidavit of age, witnessed statement of age, baptismal certificate, ~~((or driver's))~~ ID card, or driver license. Verification of residency shall be by original or copy of a Washington state ~~((driver's))~~ driver license, ((voter's)) voter registration card, or senior citizen property tax exemption, or other proof of continued residency as determined by the state parks director or director's designee.

(6) Pass holders must be present and show their valid pass and identification upon registration or when requested by any commission employee or representative.

(7) Pass holders that violate or abuse the privileges of their pass, as listed below, may be subject to suspension of their pass and assessed other fees.

(a) Duplicate or multiple reservations for the same night - Thirty-day suspension.

(b) Use of pass by unauthorized person - Sixty-day suspension and/or a fee equal to two times the campsite fee.

(c) Two or more no-shows (failure to use or cancel reservation) ~~((for reservations between May 1 and November 1))~~ - Ninety-day suspension.

(d) Repeated park rule violations - Minimum ninety-day suspension.

The pass will be confiscated by the ~~((ranger on duty or their))~~ on-duty ranger or the on-duty ranger's designee and sent to the ~~((Olympia))~~ state parks headquarters office in Olympia. At the end of the suspension, the pass will be returned to the authorized pass holder at no cost.

(8) The commission may deny or revoke any Washington state parks pass issued under this section for cause as stated in RCW 79A.05.065.

~~((9))~~ Pass holders may appeal a suspension or revocation of their pass by ((providing written justification/explanation)) mailing a written statement of the basis for appeal to the state parks director ((or designee at P.O. Box 42650, Olympia, WA 98504)) within ten days of receipt of the notice of suspension or revocation. The appeal may be decided as a brief adjudicative appeal under RCW 34.05.482 through 34.05.494 and will be decided by the state parks director or director's designee. Unless the suspension period expires, the suspension will remain in effect during the pendency of appeal.

~~((9))~~ (10) Pass holder discounts shall apply only to those fees listed in subsections (1), (2), and (3) of this section. Pass holder discounts will not apply to all other fees as published by state parks, including but not limited to, extra vehicles, vacation housing, yurts, and cabins.

~~((10))~~ (11) If the conditions of a pass holder change or the pass holder changes residency to a place outside Washington state during the time period when a pass is valid such that a pass holder no longer meets the eligibility requirements of RCW 79A.05.065 and WAC 352-32-251, the pass becomes invalid, and the pass holder ((shall)) will return the pass to the commission or surrender the pass to a state parks representative.

~~((11))~~ (12) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 11-17-067, filed 8/16/11, effective 9/16/11)

**WAC 352-32-252 Off-season senior citizen pass—Fee.** (1) Persons who are senior citizens, are at least sixty-two years of age, and have been residents of Washington state for at least the past three consecutive months ~~((shall))~~ will, upon application to the commission, receive an off-season senior citizen pass which entitles the holder's camping party to camp at any camping areas made available by the state parks commission, as well as use of agency mooring facilities, at no cost beyond the charges provided for in subsection (3) of this section, effective October 1<sup>st</sup> through March 31<sup>st</sup>, and Sunday through Thursday nights in April as determined by the state parks director and posted. Each such pass ~~((shall))~~ will be valid only during one off-season period.

(2) Applications for off-season senior citizen passes ~~((shall))~~ will be made on forms prescribed by the commission and shall be accepted only after ~~((August 1))~~ September 1<sup>st</sup> for the following off-season period.

(3) There ~~((shall))~~ will be a fee for each off-season senior citizen pass. Limited income senior citizen pass holders may purchase the off-season pass at a 50 percent discount. A surcharge equal to the fee for an electrical hookup published by state parks shall be assessed for each night an off-season senior citizen pass holder uses a campsite with an electrical hookup.

(4) Pass holders must be present and show their valid pass and identification upon registration or when requested by any commission employee or representative.

(5) Pass holder discounts shall apply only to those fees in subsections (1) and (3) of this section. Pass holder discounts will not apply to other fees as published by state parks, including but not limited to, extra vehicles, vacation housing, yurts, and cabins.

(6) If a pass holder changes residency to a place outside Washington state during the time period when a pass is valid, the pass becomes invalid and the pass holder shall return the pass to the commission or surrender the pass to a state parks representative.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

**WAC 352-32-253 Foster parent program.** (1) Any Washington state resident who provides out-of-home care to a child as either a current licensed foster family home or a person related to the child is entitled to day-use vehicle access to parks and free camping. To use a campsite, the qualified resident shall:

(a) If the park is subject to the state parks reservation system, foster parents will make reservations through the reservation services call center, pay the reservation fee, and show their foster home license or foster parent ID card along with their Washington state driver((s)) license or photo ID upon arrival at the park(s).

(b) For nonreservation parks, the foster parents upon arrival at the park will show their foster home license or foster parent ID card along with their Washington state drivers license or photo ID.

~~((c) The commission shall negotiate payment and costs, to allow holders of a foster home pass free access and usage of park campsites, with the following nonoperated, nonstate-owned parks: Central Ferry, Chief Timothy, Crow Butte and Lyons Ferry.))~~

(2) The foster parent or relative to the child and the child must be present for the duration of the stay.

(3) Violations or abuse of these privileges, including but not limited to the list below, may be subject to revocation, suspension of their privileges and/or assessed other fees.

(a) Duplicate or multiple reservations for the same night - Thirty-day suspension.

(b) Use of privileges by unauthorized person - Sixty-day suspension and/or a fee equal to two times the campsite fee.

(c) Two or more no-shows (failure to use or cancel reservation) for reservations ~~((between May 1 and November 1))~~ - Ninety-day suspension.

(d) Repeated park rule violations - Minimum ninety-day suspension.

(4) Foster parents may appeal a suspension or revocation ~~((of privileges by providing written justification/explanation to the state parks director or designee at P.O. Box 42650, Olympia, WA 98504))~~ to the state parks director by mailing a written statement of the basis for appeal to the director within ten days of receipt of the notice of suspension or revocation. The appeal may be decided as a brief adjudicative appeal under RCW 34.05.482 through 34.05.494, and will be decided by the director or designee. Unless the suspension

period expires, the suspension will remain in effect during the pendency of an appeal.

AMENDATORY SECTION (Amending WSR 16-14-020, filed 6/24/16, effective 7/25/16)

**WAC 352-37-020 Definitions.** Whenever used in this chapter the ~~((following terms shall have the meanings herein defined))~~ terms below mean the following, unless the context clearly indicates otherwise:

"Access road" means a road designated by a city, county, or the state for the purpose of accessing the ocean beaches.

"Aggregate" ~~((shall))~~ means a mixture of minerals separable by mechanical or physical means.

"Aircraft" ~~((shall))~~ means any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft ~~((shall))~~ does not include paraglider ((or remote controlled aircraft)).

"Campfires" ~~((shall))~~ means any open flame from a wood source.

"Camping" ~~((shall))~~ means erecting a tent or shelter or arranging bedding, or both, between the hours of 11:00 p.m. and 6:00 a.m.; or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Commission" ~~((shall))~~ means the Washington state parks and recreation commission.

"Concentrate" ~~((shall))~~ means the valuable mineral content separated from aggregate.

"Concentrator" ~~((shall))~~ means a device used to physically or mechanically separate the valuable mineral content from aggregate.

"Director" ~~((shall))~~ means the director of the Washington state parks and recreation commission or the director's designee.

"Driveable beach" ~~((shall))~~ means that area of the ocean beaches lying between the upper or landward limit of the hard sand area and the clam beds.

"Dry sand area" ~~((shall))~~ means that area lying above and to the landward side of the hard sand area as defined in this section.

"Excavation site" ~~((shall))~~ means the pit, furrow, or hole from which aggregate is removed to process and recover minerals or into which wastewater is discharged to settle out sediments.

"Fire" ~~((shall))~~ means any open flame from any source or device including, but not limited to, recreational fires, campfires, stoves, candles, torches, barbeques and charcoal.

"Fishtailing" means to swerve or skid from side to side.

"Ganged equipment" ~~((shall))~~ means two or more pieces of mineral prospecting equipment coupled together to increase efficiency. An example is adding a second sluice to a high-banker.

"Geocache" means geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called geocachers) use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

"Hand-held mineral prospecting tools" ~~((shall))~~ means tools that are held by hand and are not powered by internal

combustion, hydraulic, or pneumatics. Examples include metal detectors, shovels, picks, trowels, hammers, pry bars, hand-operated winches, and battery-operated pumps specific to prospecting; and vac-pacs.

"Hard sand area" ((~~shall~~)) means that area over which the tide ebbs and flows on a daily basis; and which is sufficiently hard or firm to support the weight of, and to provide unhindered traction for, an ordinary passenger vehicle.

"High-banker" ((~~shall~~)) means a stationary concentrator that can be operated outside the wetted perimeter of the body of water from which the water is removed, using water supplied by hand or by pumping. A high-banker consists of a sluice box, hopper, and water supply. Aggregate is supplied to the high-banker by means other than suction dredging. This definition excludes rocker boxes.

"Hovercraft" ((~~shall~~)) means a powered vehicle supported by a cushion of air capable of transporting persons.

"Intimidate" means to engage in conduct which would make a reasonable person fearful.

"Long Beach Peninsula" ((~~shall~~)) means that area of the ocean beaches as defined in this section lying between Cape Disappointment on the south and Leadbetter Point on the north.

"Mineral prospecting equipment" ((~~shall~~)) means any natural or manufactured device, implement, or animal (other than the human body) that can be used in any aspect of prospecting for or recovering minerals.

"Motor vehicle" ((~~shall~~)) means every vehicle that is self-propelled. For the purposes of this chapter, a motor vehicle must be approved for highway use in accordance with Title 46 RCW.

"North Beach" ((~~shall~~)) means that area of the ocean beaches as defined in this section lying between Damon Point on the south and Cape Flattery on the north.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a permit issued pursuant to WAC 352-32-165 ((~~shall~~)) does not constitute obstruction of pedestrian or vehicular traffic.

"Ocean beaches" ((~~shall~~)) means all lands fronting on the Pacific Ocean between Cape Disappointment and Leadbetter Point; between Toke Point and the south jetty on Point Chehalis; and between Damon Point and the Makah Indian Reservation, and occupying the area between the line of ordinary high tide and the line of extreme low tide, as these lines now are or may hereafter be located, and, where applicable, between the Seashore Conservation Line, as established by survey of the commission and the line of extreme low tide, as these lines now are or may hereafter be located, or as defined in RCW 79A.05.605, provided, that the ocean beaches ((~~shall~~)) does not include any lands within the established boundaries of any Indian reservation.

"Pan" ((~~shall~~)) means an open metal or plastic dish that can be operated by hand to separate gold or other minerals from aggregate by washing the aggregate.

"Parasail" ((~~shall~~)) means a parachute-type device attached to a rope pulled by a motor vehicle, resulting in the participant being lifted from the ground by the force of the wind.

"Person" ((~~shall~~)) means all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Placer" ((~~shall~~)) means a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals.

"Power sluice" ((~~shall~~)) means high-banker.

"Power sluice/suction dredge combination" ((~~shall~~)) means a machine that can be used as a power sluice, or with minor modifications as a suction dredge.

"Prospecting" ((~~shall~~)) means the exploration for minerals and mineral deposits.

"Riffle" ((~~shall~~)) means the bottom of a concentrator containing a series of interstices or grooves to catch and retain a mineral such as gold.

"Rocker box" ((~~shall~~)) means a nonmotorized concentrator consisting of a hopper attached to a cradle and a sluice box that can be operated with a rocking motion.

"Seashore conservation area" ((~~shall~~)) means all lands now or hereafter under state ownership or control as defined in RCW 79A.05.605.

"Sluice" ((~~shall~~)) means a trough equipped with riffles across its bottom which can be used to recover gold and other minerals with the use of flowing water.

"South Beach" ((~~shall~~)) means that area of the ocean beaches as defined in this section lying between Toke Point on the south and the south jetty on Point Chehalis on the north.

"Spiral wheel" ((~~shall~~)) means a hand-operated or battery-powered rotating pan that is used to recover gold and minerals with the use of water.

"Suction dredge" ((~~shall~~)) means a machine that is used to move submerged aggregate via hydraulic suction. Aggregate is processed through an attached sluice box for the recovery of gold and other minerals.

"Wetted perimeter" ((~~shall~~)) means the areas of a watercourse covered with flowing or nonflowing water.

"Wind/sand sailer" ((~~shall~~)) means a wheeled, wind-driven recreational conveyance.

**AMENDATORY SECTION** (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

**WAC 352-37-070 Conditions under which motor vehicles may be used in the exclusive pedestrian/nonmotorized use areas.** Unless specifically accepted in the description of the times during which motor vehicles are not allowed for each exclusive pedestrian/nonmotorized vehicle use area, motor vehicles may be used in the pedestrian/nonmotorized vehicle use areas under the following circumstances:

(1) Motor vehicles may be used in the areas during any recreational razor clam digging seasons designated by the department of ((~~fisheries which~~)) fish and wildlife that take place partially or entirely during the period when motor vehicles are otherwise not allowed to use the area.

(2) Motor vehicles may also be used in the areas ~~((during special events))~~ for designated activities approved by the ~~((commission as set forth in WAC 352-37-200 Special group recreation event permit, which specifically allows the use of motorized vehicles. The vehicle may be used for access or in the event))~~ director or designee.

(3) As provided by RCW 79A.05.660, public vehicles operated in the performance of official duties and vehicles responding to an emergency ~~((and))~~ may use the areas at any time.

(4)(a) Motor vehicles may be used to remove sand from ~~((a beach access))~~ an access road, gap road, or other area provided that all required permits have been obtained and the removal complies with all applicable requirements.

(b) On the Long Beach Peninsula pursuant to RCW ~~((4.24.210, 79A.05.035(5), and))~~ 79A.05.655(3), the Pacific County planning department and the city of Long Beach may issue permits for wood debris removal during any period of closure to vehicular traffic, in their respective jurisdictions, if in the opinion of said jurisdiction the amount, size, and location of such wood debris is determined to constitute a hazard to the general public and/or impede the movement of public vehicles on the ocean beach. Said permits shall be valid for twenty-four hours only. Persons seeking permits for removal of wood debris within the seashore conservation area must apply to the director or designee for a wood debris removal permit.

(5)(a) Motor vehicles may be used to remove wood debris under RCW ~~((4.24.210 and))~~ 79A.05.035(5) provided that all required permits have been obtained and the removal complies with all applicable requirements.

(b) On the Long Beach Peninsula in accordance with RCW 79A.05.655(4), the Pacific County planning department and the city of Long Beach may issue permits, on their respective jurisdictions, for the removal of sand on the ocean beach during periods of closure to vehicular traffic. Said sand removal shall occur only on beach access roads and private property under the terms of a covenant, easement, or deed that allows such activity. The local jurisdictions shall exercise good judgment in setting the terms of such sand removal permits. Such terms should prohibit sand removal during weekends, holidays, festivals, and other occasions when and where there is increased use of the ocean beach by the public. The hours of sand removal shall also be specified and shall prohibit this activity from occurring too early or too late in the day in order to minimize disturbance of nearby businesses, residents, and visitors.

(6) In case of an emergency, motor vehicles may be used to maintain and construct erosion control devices, including bulkheads, provided that all required permits have been obtained and the operation of the vehicles and the construction complies with all applicable requirements.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

**WAC 352-37-105 ~~((Fires and campfires.))~~ Recreational fires.** ~~((All fires, except campfires, fires for stoves, candles, torches, barbecues and charcoal, are prohibited in state parks. Campfires are restricted to within the designated~~

~~campfire pit, ring or other provided campfire enclosure and the flame must be no higher than two feet.))~~ On ocean beaches, ~~((campfires))~~ recreational fires must be at least one hundred feet from the dunes, no more than four feet in diameter and no more than four feet high. No ~~((campfires))~~ fires are allowed on any shellfish bed. Park rangers may impose additional restrictions on fires for the protection of the health, safety and welfare of the public, park visitors or staff, or for the protection of park resources.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

**WAC 352-37-140 Certain practices prohibited.** The following practices while operating any motor vehicle on or along the ocean beaches are specifically prohibited:

(1) ~~((Squirreling.))~~ Fishtailing;

(2) Circling;

(3) Cutting figure eights;

(4) Racing;

(5) Driving in the surf;

(6) The operation of any motor vehicle in such a manner as to constitute a threat to the operator thereof, his or her passengers, pedestrians or equestrians using the beaches, animals or any other vehicle or other property(~~(-~~

~~(6))~~);

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

**WAC 352-37-170 Aircraft.** (1) ~~((On the North Beach airplanes may land and take off on the ocean beach in the area commencing at the Copalis River north to the "rocks."~~

~~(2))~~ The use of the beach by aircraft ~~((shall be))~~ is subject to the jurisdiction of the aeronautics commission and all state and federal laws applicable to aircraft and pilots. Except as specified in subsection ~~((4))~~ (2) of this section, airplanes ~~((shall only be))~~ are only allowed to make emergency landings on the ocean beaches. ((3)) The provision does not apply to official aircraft used in the performance of search and rescue missions, medical emergencies, law enforcement activities, emergency evacuations, or firefighting activities. It also does not apply in cases where the director or designee specifically authorizes such landings or take offs, in writing, associated with the operational or administrative needs of the agency or state.

(2) On the North Beach airplanes may land and take off on the ocean beach in the area commencing at the Copalis River north of the "rocks."

(3) Remote controlled aircraft may be flown from the ocean beach only pursuant to issuance permit by the director or designee. A remote controlled aircraft is flown from an ocean beach when the operator is on the ocean beach while flying the remote controlled aircraft or where the remote controlled aircraft takes off from or lands on the ocean beach.

(a) In granting such a permit, the director or designee may specify time, geographic, and elevation restrictions, and

any other restrictions necessary to protect the public, park visitors or staff, or park resources. While operating a remote controlled aircraft the operator must be in possession of a copy of the permit and will produce it upon request by parks staff. Permits granted by the director or designee to fly a remote controlled aircraft may be rescinded at any time for permittee's failure to comply, to protect the public, park visitors or staff, or park resources.

(b) Permit applications must be submitted at least sixty days in advance of the proposed activity to allow for staff review, agency coordination, and to comply with SEPA review requirements. The sixty day application filing requirement may be waived in extenuating circumstances.

(c) The permittee must pay any fees published by state parks for the use of the park lands or facilities. The director or designee will determine the need for any fees necessary to cover costs incurred by the agency, as well as the need for any bond, damage deposit, or liability insurance arising from any potential hazards associated with the character of the event. Any such fees, bond, damage deposit, or liability insurance must be provided prior to the issuance of the permit.

(4) Any violation of this section, including any failure to abide by a conspicuously posted remote controlled aircraft flying restriction or failure to abide by the terms of permission permit to fly remote controlled aircraft, is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

**WAC 352-37-200 Special ((group)) recreation event permit.** (1) Any person ((or group)) desiring to make use of a portion of the ocean beaches for a ((group)) recreation event ((which)) that will require the closure of the area to certain conflicting recreational uses, may apply to the director for a special ((group)) recreation event permit. The director, or designee, may issue such a permit after consultation with the appropriate local government, if the event does not unduly interfere with normal public recreation. Such authorization shall include the closure of the specified area to recreational activities, including motor vehicle traffic, which are determined to have the potential to interfere with the event or which could risk the safety of the recreating public or the special event participants. However, no such authorization may result in the unreasonable exclusion of pedestrian recreationists from the specified portion of the ocean beach; all events authorized under this permit shall be open to public participation and/or observation.

(2) In determining whether to issue the permit, the director or designee will review the proposal for consistency with established approval criteria developed by the agency, which are designed to ensure the appropriateness of the event to the ocean beaches, and the basis for any associated public recreation restrictions. The criteria are available upon request from the agency.

(3) A special ((group)) recreation event permit shall be issued only for recreational events where there is a reasonable expectation that a minimum of twenty persons will participate. The event must be oriented towards a recreational pur-

suit. Not more than three permits will be issued to a given applicant for the same event during a one-year period. The ((group)) recreation activity must be consistent with the sea-shore conservation area (RCW 79A.05.600 through 79A.05.630), and may include an activity otherwise excluded under this chapter. Special ((group)) recreation events shall not exceed three days or seventy-two hours.

(4) Persons or organizations that desire to conduct a special ((group)) recreation event on the ocean beaches shall submit a permit application provided by the director and appropriate fees to the((:

~~Washington State Parks and  
Recreation Commission  
7150 Cleanwater Drive  
P.O. Box 42650  
Olympia, WA 98504 2650~~

~~Such application shall be submitted at least fifteen days in advance of the proposed date of the event, to allow for necessary internal review and analysis, consultation with local governments, public notice, establishment of permit conditions, and required agency preparations and coordination. The director or designee shall approve or disapprove a permit application and establish the conditions for an approved application)) park where the event is proposed to take place.~~

~~(5) If the agency determines it is necessary, the applicant must submit a completed environmental checklist along with the application. Upon request, the agency may assist the applicant in completing the environmental checklist and may request compensation in accordance with agency State Environmental Policy Act (SEPA) rules, chapter 352-11 WAC.~~

~~(6) Permit applications must be submitted at least sixty days in advance of the proposed activity to allow for staff review, agency coordination, and to comply with SEPA review requirements. The sixty day application filing requirements may be waived in extenuating circumstances.~~

~~(a) The permittee must pay any fees published by state parks for the use of park lands or facilities. The director or designee shall determine the need for any fees necessary to cover costs incurred by the agency, as well as the need for any bond, damage deposit, or liability insurance arising from any potential hazards associated with the character of the event. Any such fees, bond, damage deposit, or liability insurance shall be provided prior to the issuance of the permit.~~

~~((§)) (b) If additional costs are incurred by the commission resulting from the event, the applicant shall reimburse the commission for such costs in a timely manner. If the additional costs are not paid, the director or designee may recover such costs from the bond or damage deposits provided if previously required. Any funds remaining from the bond or damage deposit shall be returned to the applicant.~~

~~(7) Any violation of this section is an infraction under chapter 7.84 RCW.~~

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

**WAC 352-37-250 ((Games or)) Damaging or injurious activities.** ~~((Playing games and/or))~~ Engaging in activi-

ties in a manner ~~((and/or location which))~~ or at a location that subjects people or personal property, park resources, or park facilities in the seashore conservation area to ~~((risk of))~~ injury or damage ~~((shall be))~~ is prohibited. Any violation of this section is an infraction under chapter 7.84 RCW.