

WSR 20-05-080
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Division of Developmental Disabilities)

[Filed February 18, 2020, 1:21 p.m., effective March 20, 2020]

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

Purpose: The developmental disabilities administration (DDA) is amending these rules as part of the administration's waiver renewal process. These changes were approved by the Centers for Medicare and Medicaid Services on July 30, 2019, and are effective September 1, 2019. Many of these changes were enacted by emergency rule adoption orders, WSR 19-18-048 and 20-02-044. These changes are necessary to enact the amendments on a permanent basis and to provide services as approved in DDA's home and community based services waivers.

Citation of Rules Affected by this Order: Amending WAC 388-845-0030, 388-845-0055, 388-845-0100, 388-845-0230, 388-845-0415, 388-845-0425, 388-845-0600, 388-845-0605, 388-845-0610, 388-845-0900, 388-845-0910, 388-845-1100, 388-845-1110, 388-845-1150, 388-845-1190, 388-845-1191, 388-845-1192, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-2000, 388-845-2005, 388-845-2010, 388-845-2160, and 388-845-2170.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.120.

Adopted under notice filed as WSR 19-24-082 on December 3, 2019.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 25, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 25, Repealed 0.

Date Adopted: February 13, 2020.

Cheryl Strange
Secretary

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? (1) You meet criteria for DDA

HCBS waiver-funded services if you meet all of the following:

(a) You have been determined eligible for DDA services per RCW 71A.10.020.

(b) You have been determined to meet ICF/IID level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.

(c) You meet disability criteria established in the Social Security Act.

(d) You meet financial eligibility requirements as defined in WAC 182-515-1510.

(e) You choose to receive services in the community rather than in an ICF/IID facility.

(f) You have a need for monthly waiver services or monthly monitoring as identified in your person-centered service plan/individual support plan.

(g) You are not residing in hospital, jail, prison, nursing facility, ICF/IID, or other institution.

(h) Additionally, for the children's intensive in-home behavioral support (CIIBS) waiver-funded services:

(i) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

(ii) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(iii) You live with your family; and

(iv) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

(2) For the individual and family services waiver (~~funded services~~), you must meet the criteria in subsection (1) of this section and also(~~(~~

~~(a))~~ live in your family home(~~(; and~~

~~(b) Are age three or older~~)).

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0055 How do I remain eligible for the waiver? (1) Once you are enrolled in a DDA HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(a) You complete a reassessment with DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements;

(b) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 182-513-1320(3), or your health and welfare needs require monthly monitoring, which will be documented in your client record;

(c) You complete an in-person DDA assessment/reassessment interview per WAC 388-828-1520.

(2) For the children's intensive in-home behavioral supports waiver, you must meet the criteria in subsection (1) of this section and:

(a) Be under age twenty-one;

(b) Live with your family; and

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

(3) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and(~~(a)~~) live in (the) your family home(=and (b) Be age three or over).

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0100 What determines which waiver I am assigned to? DDA will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDA assessment as described in chapter 388-828 WAC and the following criteria:

- (1) For the individual and family services waiver, you:
 - (a) (~~Are age three or older;~~) Live in your family home; and
 - (~~(b)~~) (b) Are assessed to need a waiver service to remain in the family home.
- (2) For the basic plus waiver your health and welfare needs require a waiver service to remain in the community.
- (3) For the core waiver:
 - (a) You are at immediate risk of out-of-home placement; (~~and/or~~) or
 - (b) You have an identified health and welfare need for residential services that cannot be met by the basic plus waiver.
- (4) For the community protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.
- (5) For the children's intensive in-home behavioral support waiver, you:
 - (a) Are age eight or older (~~and~~) but under age eighteen;
 - (b) Live with your family;
 - (c) Are assessed at high or severe risk of out-of-home placement due to challenging behavior per chapter 388-828 WAC; and
 - (d) (~~You~~) Have a signed participation agreement from your ((parent/guardian(s)) parent or guardian and primary ((caregiver(s)) caregiver, if other than ((parent/guardian(s)) parent or guardian.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0230 What services are available under the individual and family services (IFS) waiver? (1) The following services are available under the individual and family services (IFS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan
Community engagement	
Environmental adaptations	

SERVICE	YEARLY LIMIT
Occupational therapy	
Peer mentoring	
Person-centered plan facilitation	
Physical therapy	
Positive behavior support and consultation	
Respite care	
Skilled nursing	
Specialized clothing	
Specialized medical equipment and supplies	
Specialized psychiatric services	
Speech, hearing, and language services	
Staff and family consultation and training	
Supported parenting services	
((Therapeutic equipment and supplies-))	
Transportation	
Vehicle modifications	
Wellness education	
Risk assessment	Limits determined by DDA. Costs are excluded from the annual allocation.
BEHAVIORAL HEALTH STABILIZATION SERVICES: <u>Crisis diversion bed services</u>	Limits determined by behavioral health professional or DDA. Costs are excluded from the annual allocation.
Positive behavior support and consultation	
Specialized psychiatric services	

(2) Your IFS waiver services annual allocation is based upon the DDA assessment under chapter 388-828 WAC. The DDA assessment determines your service level and annual allocation based on your assessed need. Annual allocations are as follows:

- (a) Level 1 = one thousand two hundred dollars;
- (b) Level 2 = one thousand eight hundred dollars;
- (c) Level 3 = two thousand four hundred dollars; or
- (d) Level 4 = three thousand six hundred dollars.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0415 What is assistive technology?

Assistive technology consists of items, equipment, or product systems, not related to a client's physical health, that are used to increase, maintain, or improve functional capabilities of waiver participants, as well as ~~((services))~~ supports to directly assist the participant ~~((and caregivers))~~ to select, acquire, and use the technology. Assistive technology is available in the CIIBS and IFS waivers, and includes the following:

- (1) The evaluation of the needs of the waiver participant, including a functional evaluation of the participant in the participant's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- (3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for the participant and/or if appropriate, the participant's family; and
- (6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive technology related life functions of individuals with disabilities.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0425 Are there limits to the assistive technology you may receive? The assistive technology you may receive has the following limits:

- (1) Assistive technology is limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.
- (2) Clinical and support needs for assistive technology ~~((are))~~ must be identified in your DDA assessment and documented in the person-centered service plan.

~~((2))~~ (3) DDA requires your treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

- (a) The treating professional has personal knowledge of and experience with the requested assistive technology; and
- (b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation of your use of the equipment and determined its effectiveness in meeting your identified need.

~~((3))~~ (4) Assistive technology requires prior approval by the DDA regional administrator or designee.

~~((4))~~ (5) DDA may require a written second opinion from a DDA-selected professional.

~~((5))~~ (6) The dollar amounts for your individual and family services (IFS) waiver annual allocation limit the amount of assistive technology you are authorized to receive.

~~((6))~~ (7) Assistive technology excludes any item that is for recreational or diversion purposes such as a television, cable, or DVD player.

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

WAC 388-845-0600 What are community ~~((access))~~ inclusion services? Community ~~((access))~~ inclusion services:

- (1) Are provided in typical, integrated community settings;
- (2) Are individualized services that promote skill development, independent living, and community integration for individuals learning how to actively and independently engage in their community; and
- (3) Provide opportunities for individuals to develop relationships and increase independence.

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

WAC 388-845-0605 Who are qualified providers of community ~~((access))~~ inclusion services? Providers of community ~~((access))~~ inclusion services must be:

- (1) A county contracted with the developmental disabilities administration (DDA) to provide community ~~((access))~~ inclusion services; or
- (2) An individual or agency contracted with a county that is contracted with DDA to provide community ~~((access))~~ inclusion services.

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

WAC 388-845-0610 Are there limits to community ~~((access))~~ inclusion services you may receive? (1) You must not receive community ~~((access))~~ inclusion services if you are receiving prevocational or supported employment services.

(2) The maximum hours of community ~~((access))~~ inclusion services you may receive are determined by the developmental disabilities administration (DDA) assessment under WAC 388-828-9310.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0900 What are environmental adaptations? (1) Environmental adaptations provide physical adaptations ~~((within the physical structure of the home, or outside the home to provide access to the home. The need must be identified by the DDA assessment and the participant's))~~ to the dwelling required by the individual's person-centered service plan~~((:))~~ needed to:

(a) Ensure the health, welfare, and safety of the individual;

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the dwelling; and

(c) Increase the individual's independence inside the dwelling or outside the dwelling to provide access to the dwelling.

(2) Examples of environmental adaptations include installing stair lifts, installing ramps and grab bars, widening doorways, modifying the individual's primary bathroom, or installing specialized electrical or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) Environmental adaptations are available in all of the DDA HCBS waivers.

~~((3) An environmental adaption must be necessary to:~~

~~(a) Maintain the health, welfare, and safety of the participant, the participant's caregiver, or both; or~~

~~(b) Increase the participant's independence in the home.))~~

(4) Only the children's intensive in-home behavioral support (CIIBS) and individual and family services (IFS) waivers may include adaptations to the ~~((home))~~ dwelling necessary to prevent or repair property destruction caused by the participant's behavior, as addressed in the participant's positive behavior support plan.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0910 What limits apply to environmental adaptations? The following service limits apply to environmental adaptations:

(1) Clinical and support needs for an environmental ~~((adaptations))~~ adaptation must be identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee and must be supported by itemized and written bids from licensed contractors. For an adaptation that costs:

(a) One thousand five hundred dollars or less, one bid is required;

(b) More than one thousand five hundred dollars and equal to or less than five thousand dollars, two bids are required; or

(c) More than five thousand dollars, three bids are required.

(3) All bids must include:

(a) The cost of all required permits and sales tax; and

(b) An itemized and clearly outlined scope of work.

(4) DDA may require an occupational therapist, physical therapist, or construction consultant to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

(5) Environmental adaptations to the home are excluded if they are of general utility without direct ~~((medical or remedial))~~ benefit to the individual as related to the individual's developmental disability, such as cosmetic improvements to

the dwelling, or general home improvements, such as carpeting, roof repair, or central air conditioning.

(6) Environmental adaptations must meet all local and state building codes. Evidence of any required completed inspections must be submitted to DDA prior to ~~((authorizing))~~ final payment for work.

(7) The condition of the dwelling or other projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA.

(8) Location of the dwelling in a flood plain, landslide zone, or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

(9) Written consent from the dwelling landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.

(10) Environmental adaptations must not add to the total square footage of the ~~((home))~~ dwelling.

(11) The dollar amounts for aggregate services in your basic plus waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.

(12) For core, community protection, and CIIBS waivers, annual environmental adaptation costs must not exceed twelve thousand one hundred ninety-two dollars.

(13) Damage prevention and repairs under the CIIBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original function;

(b) Limited to the dollar amounts of the IFS waiver participant's annual allocation;

(c) Behaviors of waiver participants that resulted in damage to the dwelling must be addressed in a positive behavior support plan prior to the repair of damages;

(d) Repairs to personal property such as furniture and appliances are excluded; and

(e) Repairs due to normal wear and tear are excluded.

(14) The following adaptations are not covered as an environmental adaptation:

(a) Building fences and fence repairs;

(b) Carpet or carpet replacement;

(c) Air conditioning, heat pumps, generators, or ceiling fans; ~~((and))~~

(d) Roof repair or siding;

(e) Deck construction or repair; and

(f) Jetted tubs or saunas.

(15) Environmental adaptations are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1100 What are behavioral health crisis diversion bed services? Behavioral health crisis diversion bed services are ~~((temporary))~~ short-term emergent residential ~~((and behavioral))~~ services that may be provided in a

client's home, licensed or certified setting, or state operated setting. These services are available to eligible clients ~~((who are))~~ whose current living situation is disrupted and the client is at risk of ~~((serious decline of mental functioning and who have been determined to be at risk of psychiatric hospitalization))~~ institutionalization. These services are available in all ~~((four))~~ five HCBS waivers administered by DDA as behavioral health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1110 What are the limits of behavioral health crisis diversion bed services? (1) Clinical and support needs for behavioral health crisis diversion bed services are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan ~~((individual support plan))~~.

(2) Behavioral health crisis diversion bed services are intermittent and temporary. ~~((The duration and amount of services you need to stabilize your crisis is determined by))~~ A behavioral health professional ((and/or)) may make a recommendation about your need for behavioral health crisis diversion bed services. DDA determines the duration and amount of behavioral health crisis diversion bed services you will receive.

(3) ~~((These services are available in the CIIBS, basic plus, core, and community protection waivers administered by DDA as behavioral health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.~~

(4)) The costs of behavioral health crisis diversion bed services do not count toward the dollar amounts for aggregate services in the basic plus waiver or the annual allocation in the individual and family services waiver.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1150 What are behavioral health stabilization services? (1) Behavioral health stabilization services assist persons who are experiencing a behavioral health crisis.

(2) Behavioral health stabilization services are available in the basic plus, core, children's intensive in-home behavior support (CIIBS), individual and family services (IFS), and community protection waivers.

(3) A participant may be eligible for behavioral health stabilization services if:

(a) A behavioral health professional or DDA has determined the participant is at risk of institutionalization or hospitalization;

(b) The participant needs:

(i) Positive behavior support and consultation;

(ii) Specialized psychiatric services for people age twenty-one and older; or

(iii) Behavioral health crisis diversion bed services available to participants on the individual and family services, basic plus, core, CIIBS, and community protection waivers.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1190 What is peer mentoring? (1) Peer mentoring is a form of mentorship that takes place between a person who ~~((is living))~~ has lived through ~~((the))~~ an experience ~~((of having a developmental disability or family member of a person who has a developmental disability))~~ (peer mentor) and a person who is new to that experience ~~((the peer))~~ mentee. Peer mentors use their experience to inform, support, and train mentees to successfully navigate new experiences related to or impacted by their disability.

(2) A peer ~~((mentors utilize their personal experiences to))~~ mentor may provide support and guidance to a waiver participant and the participant's family ~~((members of a waiver participant))~~.

(3) A peer ~~((mentors))~~ mentor may ~~((orient))~~ connect a waiver participant to local community services, programs, and resources and ~~((provide answers to participants'))~~ answer participant questions or suggest other sources of support.

(4) Peer mentoring is available in the IFS waiver.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1191 Who are qualified providers of peer mentoring? ~~((Qualified providers include organizations who are contracted))~~ An individual or organization must contract with DDA to provide peer mentoring support and training to ~~((individuals))~~ people with developmental disabilities or to families with a member with a developmental disability.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1192 What ~~((limitations are there for))~~ limits apply to peer mentoring? (1) Support needs for peer mentoring are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan ~~((individual support plan))~~.

(2) DDA does not contract with a peer ~~((mentors cannot))~~ mentor to mentor ~~((their))~~ a member of the mentor's own family ~~((members))~~.

(3) ~~((The dollar amounts for the))~~ A waiver participant's ~~((annual allocation in the IFS waiver limit the amount of))~~ peer mentoring ~~((service that))~~ services are limited to the ~~((participant is authorized to receive))~~ participant's annual IFS waiver allocation.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are durable and nondurable medical equipment, or equipment necessary to prevent institutionalization, not available through the medicaid ~~((or the))~~ state plan or are in excess of what is available through the medicaid state plan benefit which enables individuals ~~((to))~~:

(a) To increase their abilities to perform their activities of daily living; (~~or~~)

(b) To perceive, control, or communicate with the environment in which they live; or

(c) On the IFS waiver only, to improve daily functioning through sensory integration when prescribed in a written therapeutic plan by the current treating professional.

(2) Durable medical equipment and medical supplies are defined in WAC 182-543-1000 and 182-543-5500 respectively.

(3) Also included are items necessary for life support and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) of this section.

(4) Specialized medical equipment and supplies include the maintenance and repair of specialized medical equipment not covered through the medicaid state plan.

(5) Specialized medical equipment and supplies are available in all DDA HCBS waivers.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies? (1) The provider of specialized medical equipment and supplies must be a medical equipment supplier contracted with DDA or have a state contract as a Title XIX vendor.

(2) For IFS only, the provider of specialized medical equipment and supplies under WAC 388-845-1800(1)(c) must be contracted with DDA as a provider of specialized goods and services or specialized equipment and supplies.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1810 Are there limits to the specialized medical equipment and supplies you may receive? The following limits apply to the specialized medical equipment and supplies you may receive:

(1) ~~((Clinical and))~~ Habilitative support needs for specialized medical equipment and supplies are limited to those identified in your DDA person-centered assessment and documented in your person-centered service plan.

(2) Specialized medical equipment and supplies require prior approval by the DDA regional administrator or designee for each authorization.

(3) DDA may require a second opinion by a DDA-selected provider.

(4) Items must be of direct medical or remedial benefit to you and necessary as a result of your disability.

(5) Medications and vitamins are excluded.

(6) The dollar amounts for aggregate services in your basic plus waiver limit the amount of service you may receive.

(7) The dollar amounts for your annual allocation in your individual and family services (IFS) waiver limit the amount of service you may receive.

(8) Items excluded from specialized equipment and supplies include nonspecialized recreational equipment, such as trampolines, swing sets, and hot tubs.

(9) Specialized equipment and supplies are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-2000 What is staff and family consultation and training? (1) Staff and family consultation and training is professional assistance, not covered by the medicaid state plan, to families or direct service providers to help them (~~(better)~~) meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

(2) Staff and family consultation and training is available in all DDA HCBS waivers.

(3) ~~((Staff and family consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of a participant as outlined in the participant's person-centered service plan.~~

~~((4))~~ Staff and family consultation and training ((includes)) is consultation and guidance about one or more of the following:

(a) Health and medication (~~((monitoring))~~);

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;

(d) Positive behavior support;

(e) Augmentative communication systems;

(f) Diet and ~~((nutritional guidance))~~ nutrition;

(g) Disability information and education;

(h) Strategies for effectively and therapeutically interacting with the participant;

(i) Environmental ~~((consultation))~~ safety; ~~((and))~~

(j) Assistive technology safety; and

(k) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2005 Who is a qualified provider of staff(~~(+)~~) and family consultation and training? To provide staff(~~(+)~~) and family consultation and training, a provider must be contracted with DDA and be one of the following licensed, registered, or certified professionals:

(1) Audiologist;

(2) Licensed practical nurse;

(3) Marriage and family therapist;

(4) Mental health counselor;

(5) Occupational therapist;

(6) Physical therapist;

(7) Registered nurse;

(8) Sex offender treatment provider;

(9) Speech(~~(+)~~)-language pathologist;

(10) Social worker;

(11) Psychologist;

(12) Certified American sign language instructor;

(13) Nutritionist;

- (14) Counselors registered or certified in accordance with chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the national council for therapeutic recreation;
- (17) Providers listed in WAC 388-845-0506 and contracted with DDA to provide CIIBS intensive services;
- (18) Certified music therapist (for CIIBS only);
- (19) Psychiatrist; ~~((or))~~
- (20) Professional advocacy organization; or
- (21) Teacher certified under chapter 181-79A WAC.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-2010 Are there limits to the staff and family consultation and training you may receive? (1) Staff and family consultation and training are limited to supports identified in your DDA assessment and documented in the person-centered service plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff and family consultation and training.

(3) The dollar amounts for aggregate service in your basic plus waiver or the dollar amount of the annual allocation in your individual and family services (IFS) waiver limit the amount of staff and family consultation and training you may receive.

(4) Under the basic plus waiver, individual and family counseling is limited to family members who:

- (a) Live with the participant; and
- (b) Have been assaulted by the participant and the assaultive behavior was:
 - (i) Documented in the participant's person-centered service plan; and
 - (ii) Addressed in the participant's positive behavior support plan or therapeutic plan.

(5) Staff and family consultation and training does not provide training necessary to meet contractual licensing or certification requirements.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-2160 What is therapeutic equipment and supplies? (1) Therapeutic equipment and supplies are only available in the CIIBS ~~((and IFS waivers))~~ waiver.

(2) Therapeutic equipment and supplies are equipment and supplies that are necessary to implement a behavioral support plan or other therapeutic plan, designed by an appropriate professional, such as a sensory integration or communication therapy plan, and necessary in order to fully implement the therapy or intervention.

(3) Included are items such as a weighted blanket, supplies that assist to calm or redirect the individual to a constructive activity, or a vestibular swing.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-2170 Are there limits to your receipt of therapeutic equipment and supplies? The following limits apply to your receipt of therapeutic equipment and supplies under the children's intensive in-home behavior support (CIIBS) ~~((and individual and family services (IFS) waivers))~~ waiver:

(1) DDA requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(2) DDA may require a second opinion from a DDA-selected professional.

~~(3) ((The dollar amount of your annual allocation in your IFS waiver limits the amount of therapeutic equipment and supplies you are authorized to receive.~~

~~(4))~~ Therapeutic equipment and supplies ~~((requires a))~~ require prior approval by the DDA regional administrator or designee.

~~((5))~~ (4) Therapeutic equipment and supplies ~~((excludes))~~ do not include nonspecialized recreational items such as trampolines, swing sets, and hot tubs.

WSR 20-06-003
PERMANENT RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed February 19, 2020, 2:20 p.m., effective March 21, 2020]

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

Purpose: SWCAA 400-025 Adoption of Federal Rules. The proposed rule changes establish a new section identifying a generally applicable adoption by reference date for federal regulations cited in other sections of SWCA [SWCAA] 400.

SWCAA 400-050 Emission Standards for Combustion and Incineration Units. The proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025 and add a new federal regulation citation for Hospital/Medical/Infectious Waste Incinerators.

SWCAA 400-046 Application Review Process for Non-road Engines, SWCAA 400-060 Emission Standards for General Process Units, SWCAA 400-070 General Requirements for Certain Source Categories, SWCAA 400-072 Emission Standards for Selected Small Source Categories, SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants, SWCAA 400-105 Records, Monitoring and Reporting, SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources, SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review), SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area, SWCAA 400-115 Standards of Performance for New Sources, SWCAA 400-171 Public Involvement, SWCAA 400-850 Actual Emissions Plantwide Applicability Limitation (PAL), SWCAA 400, Appendix A SWCAA Method 9 -

Visual Opacity Determination Method. The proposed rules changes revise adoption by reference citations to cite the date in SWCAA 400-025.

Citation of Rules Affected by this Order: New SWCAA 400-025; and amending SWCAA 400-046, 400-050, 400-060, 400-070, 400-072, 400-075, 400-105, 400-106, 400-110, 400-111, 400-115, 400-171, 400-850, 400 Appendix A.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 19-21-110 on October 17, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 14, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 14, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 14, Repealed 0.

Date Adopted: February 6, 2020.

Uri Papish
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 20-08 issue of the Register.

WSR 20-06-006
PERMANENT RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed February 20, 2020, 9:00 a.m., effective March 22, 2020]

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

Purpose: SWCAA 476-010 Purpose. The proposed rule change removes encapsulation from the list of regulated activities.

SWCAA 476-030 Definitions. The proposed rule change reorders two definitions and makes formatting changes to existing definitions.

SWCAA 476-040 Asbestos Project Requirements. The proposed rule change corrects sectional references, replaces the term Agency with the term SWCAA, removes the Exceptions paragraph, revises bulk sampling requirements and makes minor text edits.

SWCAA 476-050 Notification Requirements and Fees. The proposed rule change clarifies the need for SWCAA approval for project notices, replaces the term Agency with the term SWCAA and makes minor text edits.

SWCAA 476-060 Procedures for Asbestos Projects. The proposed rule change adds a requirement for worker certifi-

cation and identification cards and replaces the term Agency with the term SWCAA.

SWCAA 476-070 Disposal of Asbestos-Containing Waste Material. The proposed rule change replaces the term Agency with the term SWCAA.

Citation of Rules Affected by this Order: Amending SWCAA 476-010, 476-030, 476-040, 476-050, 476-060, 476-070.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 19-22-040 on October 31, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: February 6, 2020.

Uri Papish
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 20-07 issue of the Register.

WSR 20-06-007
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed February 20, 2020, 11:22 a.m., effective March 22, 2020]

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

Purpose: This permanent rule-making order repeals chapter 392-164 WAC, Special services program—Chapter 1 Migrant Of The Education Consolidation And Improvement Act Of 1981, financial assistance to state educational agencies. The rules were adopted in 1988 to implement the provisions of the federal Migrant Education Program then in effect under Title I, Chapter 1 of the Elementary and Secondary Education Act (ESEA), as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. No. 100-297). With the United States Congress's subsequent reauthorizations of the ESEA and the Migrant Education Program in 1994, 2002, and 2015, the rules are obsolete, and their repeal will have no substantive effect.

Citation of Rules Affected by this Order: Repealing chapter 392-164 WAC.

Statutory Authority for Adoption: Not applicable.

Adopted under notice filed as WSR 20-01-138 on December 17, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 67.

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

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

Date Adopted: February 20, 2020.

Chris P.S. Reykdal
State Superintendent
of Public Instruction

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 392-164-100 Authority.
- WAC 392-164-105 Purpose.
- WAC 392-164-115 Accountability.
- WAC 392-164-120 Chapter 1 Migrant—Definition.
- WAC 392-164-125 Agricultural activity—Definition.
- WAC 392-164-130 Fishing activity—Definition.
- WAC 392-164-135 Migratory agricultural worker—Definition.
- WAC 392-164-140 Migratory fisher—Definition.
- WAC 392-164-145 Currently migratory child—Definition.
- WAC 392-164-150 Formerly migratory child—Definition.
- WAC 392-164-155 Migratory children—Definition.
- WAC 392-164-160 Children—Definition.
- WAC 392-164-165 Preschool children—Definition.
- WAC 392-164-170 Eligible migratory children—Definition.
- WAC 392-164-175 Guardian—Definition.
- WAC 392-164-180 Other subgrantee—Definition.
- WAC 392-164-185 Object of expenditure—Definition.
- WAC 392-164-190 Activity—Definition.
- WAC 392-164-195 Indirect expenditure—Definition.
- WAC 392-164-200 Direct expenditure—Definition.
- WAC 392-164-205 Service model—Definition.
- WAC 392-164-210 Supplement—Definition.
- WAC 392-164-215 Operating agency—Definition.
- WAC 392-164-220 Project—Definition.
- WAC 392-164-225 Academic instruction—Definition.
- WAC 392-164-230 Greatest need of special assistance—Definition.
- WAC 392-164-235 Consultation with parents and teachers of participating children—Definition.
- WAC 392-164-240 Definition—Participating children.
- WAC 392-164-245 Annual needs assessment.
- WAC 392-164-250 Service priorities.
- WAC 392-164-255 Application required.
- WAC 392-164-260 Substance of annual application.
- WAC 392-164-265 Basis of project planning and funding.
- WAC 392-164-270 Board approval.
- WAC 392-164-275 Board certification.
- WAC 392-164-280 Supervisory costs.
- WAC 392-164-285 Approval of Chapter 1 Migrant project applications for a subgrant by the superintendent of public instruction.
- WAC 392-164-290 Amount of subgrant.
- WAC 392-164-295 Effect of approval.
- WAC 392-164-300 Budget revision—Ten percent allowed.
- WAC 392-164-305 Budget revisions—Updating planned expenditures.
- WAC 392-164-310 Budget revision—Approval.
- WAC 392-164-315 Program update.
- WAC 392-164-320 Identification of migratory children.
- WAC 392-164-325 Student accident insurance.
- WAC 392-164-330 Construction and portable lease/purchase.
- WAC 392-164-335 Property, facilities, and equipment.
- WAC 392-164-340 Day care.
- WAC 392-164-345 Preschool services.
- WAC 392-164-350 Fiscal requirements.
- WAC 392-164-355 Chapter 1 Migrant audit.
- WAC 392-164-360 Notification of parents.
- WAC 392-164-365 Local parent advisory councils—Composition and procedures.
- WAC 392-164-368 Consultation with parents.
- WAC 392-164-370 Annual meeting of parents.
- WAC 392-164-375 State advisory committee.
- WAC 392-164-380 Report of services—Annual requirement.
- WAC 392-164-385 Report of services—Summer school addendum.
- WAC 392-164-390 Program evaluation.

WAC 392-164-395 Project program and budget revisions.
 WAC 392-164-400 Program compliance review.
 WAC 392-164-405 Subgrantee accountability.
 WAC 392-164-410 Withholding of Chapter 1 Migrant payments.
 WAC 392-164-415 Compliance agreement.
 WAC 392-164-420 General requirements for new program.
 WAC 392-164-425 Subgrant allocation formula.
 WAC 392-164-430 Supply purchase.

WSR 20-06-008
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed February 20, 2020, 12:30 p.m., effective May 1, 2020]

Effective Date of Rule: May 1, 2020.

Purpose: Washington Paid Family and Medical Leave, or PFML insurance program, as codified in Title 50A RCW, became effective on October 19, 2017. Beginning January 1, 2020, the PFML insurance program provides a partial wage replacement for Washington workers for an employee's own medical condition, to care for family members, bonding with a child or for certain military-related events. Under the PFML insurance program, the employment security department will replace up to 90% of an employee's average weekly wage (up to \$1,000 per week). During the 2019 legislative session, the law was amended to allow the employer to offer a "supplemental benefit" to employees while they are on approved PFML. The proposed new section, WAC 357-31-247, is to allow an employee the option to choose whether or not they want to use their accrued paid leave as a supplemental benefit. The proposed new section, WAC 357-31-248, addresses which accrued leave an employee may use as a supplemental benefit. The proposed new section, WAC 357-31-249 allows a higher education employer the ability to deny an employee's request to use accrued leave as a supplemental benefit during a period when the employee is receiving partial wage replacement PFML from May 1 to August 1, 2020, to allow for system readiness. The proposed amendments incorporate the ability for an employee to request to use their accrued leave as a supplemental benefit, required updates to employers leave policies and removing the Washington Family Leave Law from WAC 357-31-520. The proposed amendments to WAC 357-31-490 and 357-31-515 are to add shared leave as a type of leave an employee can request for a pregnancy related disability and for parental reasons in accordance with WAC 357-31-390 subsections (1)(g) and (1)(h).

Citation of Rules Affected by this Order: New WAC 357-31-247, 357-31-248 and 357-31-249; and amending WAC 357-31-070, 357-31-100, 357-31-130, 357-31-200, 357-31-230, 357-31-327, 357-31-335, 357-31-490, 357-31-515, 357-31-520, and 357-31-567.

Statutory Authority for Adoption: Chapter 41.06 RCW.
 Other Authority: RCW 50A.15.060.

Adopted under notice filed as WSR 20-02-103 on December 31, 2020.

Changes Other than Editing from Proposed to Adopted Version: Since the proposed version, WAC 357-31-100 and 357-31-248 were changed. WAC 357-31-100(3) was changed with a minor correction to state that the employer's leave policy must allow an employee to use (not designate) accrued leave as a supplemental benefit as provided in WAC 357-31-248 to remain consistent with other WAC language. WAC 357-31-248 was changed to add a comma in between the words "personal holiday" and "compensatory time."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 11, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 11, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 11, Repealed 0.

Date Adopted: February 20, 2020.

Roselyn Marcus
 Assistant Director of
 Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?

(1) An employer must approve the use of a personal holiday as long as:

(a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;

(b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and

(c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for any of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision;

(b) To care for a spouse, registered domestic partner, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition;

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; ((~~☞~~))

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner

who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment; or

(e) If the employee requests to use their personal holiday as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

AMENDATORY SECTION (Amending WSR 19-11-135, filed 5/22/19, effective 7/1/19)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave? Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must:

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies or for an emergency health condition as provided in WAC 357-31-200 (1)(b);

(2) Allow an employee to use a reasonable amount of accrued leave or unpaid leave when the employee is a victim or has a family member, as defined in chapter 357-01 WAC, who is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020;

(3) Allow an employee to use accrued leave as a supplemental benefit as provided in WAC 357-31-248;

(4) Address advance notice from the employee when the employee is seeking leave under subsections (2) and (3) of this section. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave;

~~((4))~~ (5) Allow an employee to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child. The policy must state the total amount of sick leave allowed to be used beyond eighteen weeks in accordance with WAC 357-31-130;

~~((5))~~ (6) Address overtime eligible employees that are required to provide medical certification or verification to their employer for the use of paid sick leave under chapter 296-128 WAC; and

~~((6))~~ (7) Address overtime eligible employees that are required to provide reasonable notice to their employer for an absence from work for the use of paid sick leave under chapter 296-128 WAC.

AMENDATORY SECTION (Amending WSR 19-11-135, filed 5/22/19, effective 7/1/19)

WAC 357-31-130 When may an employee use accrued sick leave? The employer may require medical ver-

ification or certification of the reason for sick leave use in accordance with the employer's leave policy and in compliance with chapter 296-128 WAC.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) An employee's mental or physical illness, disability, injury or health condition that has incapacitated the employee from performing required duties; to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or an employee's need for preventive medical care.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such reason.

(d) To allow an employee to provide care for a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or care for a family member who needs preventive medical care.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300 and 357-31-305.

(f) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee or relatives of the employee's spouse/registered domestic partner who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, registered domestic partner, child, grandchild, grandparent or parent.

(g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW.

(h) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

~~((h))~~ (i) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

~~((f))~~ (j) When an employee requests to use sick leave for the purpose of parental leave to bond with a newborn, adoptive or foster child for a period up to eighteen weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement;

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255; or

(c) To bond with a newborn, adoptive or foster child for a period beyond eighteen weeks as allowed in subsection (1)(i) of this section. Sick leave for this purpose must be taken during the first year following the child's birth or placement. The total amount of sick leave allowed to be used, beyond subsection (1)(i) of this section must be addressed in the employer's leave policy in accordance with WAC 357-31-100.

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-200 When must an employer grant the use of vacation leave? (1) An employee's request to use vacation leave must be approved under the following conditions:

(a) As a result of the employee's serious health condition.

(b) To care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.

(c) To care for a minor/dependent child with a health condition that requires treatment or supervision.

(d) For parental leave as provided in WAC 357-31-460.

(e) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(f) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(g) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through ~~((f))~~ (g) above may be subject to verification that the condition or circumstance exists or that paid family and/or medical leave under Title 50A RCW has been approved.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

WAC 357-31-230 When ~~((can))~~ may an employee use accrued compensatory time? (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(6) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.

~~((f))~~ (7) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

~~((f))~~ (8) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use compensatory time in lieu of temporary layoff as described in chapter 32, Laws of 2010.

NEW SECTION

WAC 357-31-247 May an employee use leave if the employee is approved to receive partial wage replacement for paid family and/or medical leave under Title 50A RCW? An employee who is approved to receive partial wage replacement for paid family and/or medical leave under Title 50A RCW may choose to receive partial wage replacement for paid family and/or medical leave exclusively, use accrued

paid leave exclusively, or combine the partial wage replacement for paid family and/or medical leave and accrued paid leave as a supplemental benefit.

NEW SECTION

WAC 357-31-248 May an employee use vacation leave, sick leave, personal holiday, compensatory time, recognition leave, or holiday pay as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW? An employee may use vacation leave, sick leave, personal holiday, compensatory time, recognition leave, or holiday pay during a period when the employee is receiving partial wage replacement under Title 50A RCW as a supplemental benefit.

NEW SECTION

WAC 357-31-249 May a higher education employer deny an employee's request to use accrued leave in accordance with WAC 357-31-248 as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW? A higher education employer may deny an employee's request to use accrued leave in accordance with WAC 357-31-248 as a supplemental benefit during a period when the employee is receiving partial wage replacement for paid family and/or medical leave under Title 50A RCW from May 1, 2020, to August 1, 2020, to allow for system readiness.

AMENDATORY SECTION (Amending WSR 14-24-024, filed 11/21/14, effective 12/22/14)

WAC 357-31-327 When must an employer grant leave without pay? An employer must grant leave without pay under the following conditions:

(1) When an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency;

(2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76-.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

(3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC 357-31-052.

(5) When an employee is on approved paid family and/or medical leave under Title 50A RCW. Leave taken under this

subsection may be subject to verification that the employee has been approved to receive benefits for paid family and/or medical leave under Title 50A RCW and qualifies for employment protection in accordance with RCW 50A.35-.010.

AMENDATORY SECTION (Amending WSR 05-08-138, filed 4/6/05, effective 7/1/05)

WAC 357-31-335 How long can an employee remain on leave without pay? The employer determines the length of time an employee may remain on leave without pay. The employer's leave policy must address any limitations on the length of time for which leave without pay will be approved. When an employee has been approved to receive benefits for approved paid family and/or medical leave under Title 50A RCW and qualifies for employment protection in accordance with RCW 50A.35.010, an employee must remain on leave without pay while receiving a partial wage replacement.

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

WAC 357-31-490 Will time off for parental leave be paid or unpaid? (1) Parental leave may be a combination of vacation leave, personal holiday, compensatory time, shared leave and leave of absence without pay. Sick leave may be used if the criteria in WAC 357-31-130 are met. The combination and use of paid and unpaid leave during a parental leave is at the employee's choice.

(2) If necessary while on approved parental leave, the employee must be allowed to use a minimum of eight hours per month of the accrued paid leave identified in subsection (1) of this section during a parental leave of absence without pay to provide for continuation of benefits as provided by the public employees' benefits board. The employer designates when during the month paid leave will be interspersed to maintain benefits.

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

WAC 357-31-515 Will time off during the period of disability leave due to pregnancy and/or childbirth be paid? Disability leave due to pregnancy and/or childbirth may be a combination of sick leave, vacation leave, personal holiday, compensatory time, shared leave and leave without pay. The combination and use of paid and unpaid leave must be per the choice of the employee.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-520 How does the Family and Medical Leave Act of 1993 and the ~~((family leave law))~~ Washington Paid Family and Medical Leave Act interact with the civil service rules? Benefits provided through state laws and civil service rules must not be diminished or withheld in complying with the Family and Medical Leave Act of 1993 ~~((FMLA)).~~

~~Washington's family leave law (chapter 49.78 RCW) generally is similar to and runs concurrently with the federal FMLA for those provisions outlined in WAC 357-31-525 (1) (a) through (c) but also allows leave to be taken for the care of an employee's registered domestic partner with a serious health condition. However, Washington's family leave law does not address exigency leave, described in WAC 357-31-525 (1)(d), or leave for a covered service member, described in WAC 357-31-525(2). Therefore, an employer is not required to provide exigency leave or leave for a covered service member for a registered domestic partner.~~

~~Because the FMLA does not recognize registered domestic partners, an absence to care for an employee's registered domestic partner is not counted towards the twelve weeks of the FMLA entitlement described in WAC 357-31-525. For example:~~

~~If an employee uses twelve weeks of leave to care for their registered domestic partner during a twelve-month period, and no other FMLA leave was used, the employee is still entitled to his or her full twelve week FMLA entitlement during the same twelve-month period, as the leave used was provided for a purpose not covered by FMLA; however, if an employee uses twelve weeks of leave to care for their parent or for another FMLA qualifying reason, then during that same twelve-month period the employer would not be required to provide additional leave under Washington's family leave law to care for the employee's registered domestic partner because the twelve week entitlement under FMLA and Washington's family leave law has been exhausted)) or the Washington Paid Family and Medical Leave Act.~~

AMENDATORY SECTION (Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)

WAC 357-31-567 When must an employer grant the use of recognition leave? (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; ~~((and))~~

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment; and

(c) When requested as a supplemental benefit while receiving a partial wage replacement for paid family and/or medical leave under Title 50A RCW as provided in WAC 357-31-248. Leave taken under this subsection may be subject to verification that the employee has been approved to

receive benefits for approved paid family and/or medical leave under Title 50A RCW.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and (b) above may be subject to verification that the condition or circumstance exists.

(3) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use recognition leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.

WSR 20-06-009
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed February 20, 2020, 12:30 p.m., effective March 30, 2020]

Effective Date of Rule: March 30, 2020.

Purpose: Provide clear expectations of what is and what is not acceptable for seeking the wage or salary information from an applicant or an applicant's employer until the applicant has voluntarily disclosed their wage history or after the employer has negotiated and made an offer of employment. ESHB 1696 was passed during the 2019 legislative session with an effective date of July 28, 2019. ESHB 1696 prohibits an employer from seeking the wage or salary history of an applicant for employment from the applicant or a current or former employer or requiring that the applicant's prior wage or salary history meet certain criteria. This bill also requires employers, upon request of an applicant for employment, to provide the wage scale or salary range for the job title for the position for which the applicant is applying. The proposed new section, WAC 357-16-017, addresses when an employer must provide the salary range or management band for a position. The proposed new section, WAC 357-16-215, addresses when an employer may seek the wage or salary history of an individual for employment. The proposed new section, WAC 357-16-220, addresses when an employer may confirm an individual's wage or salary history. The proposed amendment to WAC 357-58-190(8) is to add that the wage and salary history requirements in chapter 357-16 WAC must be addressed in agency's Washington management services recruitment and selection policy and/or procedure.

Citation of Rules Affected by this Order: New WAC 357-16-017, 357-16-215 and 357-16-220; and amending WAC 357-58-190.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Other Authority: RCW 49.58.100 and 49.58.110.

Adopted under notice filed as WSR 20-02-083 on December 30, 2019.

Changes Other than Editing from Proposed to Adopted Version: Since the proposed version, WAC 357-16-017 was changed to address "the employer" as "an employer." WAC 357-16-017, 357-16-215, and 357-16-220 were changed to address that all sections also include employers with fewer than fifteen employees [employees]. WAC 357-58-190 was changed to reference the RCW instead of stating "state law."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 1, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 1, Repealed 0.

Date Adopted: February 20, 2020.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

NEW SECTION

WAC 357-16-017 When must an employer provide the salary range or management band for a position? In accordance with RCW 49.58.110, an employer must provide the salary range or management band in the following circumstances:

(1) Upon request of an individual for employment after an employer has initially offered the individual the position; and

(2) Upon request of a current employee who is offered an appointment to another position.

If no salary range or management band exists, an employer must provide the minimum wage set by the employer prior to posting the position or appointing an employee to another position.

For the purposes of this section "employer" also includes those employers with fewer than fifteen employees.

NEW SECTION

WAC 357-16-215 May an employer seek the wage or salary history of an individual for employment? In accordance with RCW 49.58.100, an employer may not:

(1) Seek the wage or salary history of an individual applying for employment, including current employees, from the individual or the individual's current or former employer; or

(2) Require that an individual's prior wage or salary history meet certain criteria, except as provided in WAC 357-16-220.

For the purposes of this section "employer" also includes those employers with fewer than fifteen employees.

NEW SECTION

WAC 357-16-220 May an employer confirm an individual's wage or salary history? In accordance with RCW

49.58.100, an employer may confirm an individual's wage or salary history if:

(1) The individual has voluntarily disclosed their wage or salary history; or

(2) After the employer has negotiated an offer and made an offer of employment including compensation to the individual.

For the purposes of this section "employer" also includes those employers with fewer than fifteen employees.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-190 What must be addressed in agency's WMS recruitment and selection policy and/or procedure? An agency's WMS recruitment and selection policy must:

(1) Provide for the ability to consider any or all qualified candidates for hire, promotion, or internal movement;

(2) Ensure that hiring decisions are fair, objective, and based on the evaluation of leadership and other job related competencies and characteristics required for successful job performance and performance management;

(3) Support workforce diversity and affirmative action goals;

(4) Consider the career development of the agency's employees and other state employees;

(5) Ensure that hiring decisions are not based on patronage or political affiliation;

(6) Ensure compliance with state and federal laws relating to employee selection and nondiscrimination;

(7) Encourage decentralized and regional administration of the recruitment and selection processes when it is appropriate for the agency;

(8) Ensure compliance with requirements governing wage and salary information in accordance with RCW 49.58.-100, 49.58.110, WAC 357-16-017, 357-16-215, and 357-16-220.

WSR 20-06-010

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed February 20, 2020, 12:30 p.m.]

Effective Date of Rule: March 30, 2020.

Purpose: To align Title 357 WAC with the online filing request capabilities for director's review requests and personnel resources board appeal requests. The proposed amendments to WAC 357-49-023 and 357-52-225 are to allow an individual to file director's review requests and personnel resources board appeals online. Filing by fax, by mail or in person are still acceptable avenues for filing and to state requests are considered filed when a legible copy is received. The proposed amendment to WAC 357-49-023(2) and 357-52-225(2) are to update the fax filing requirements. The proposed amendment to WAC 357-49-023(3) and 357-52-225(3) removes email as an option for filing director's review requests because of the new online filing capabilities.

Citation of Rules Affected by this Order: Amending WAC 357-49-023 and 357-52-225.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Other Authority: RCW 41.06.133.

Adopted under notice filed as WSR 20-02-085 on December 30, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: February 20, 2020.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 16-11-058, filed 5/13/16, effective 6/20/16)

WAC 357-49-023 ((For purposes of this chapter,))
How must ((documents)) director's review requests be filed with the director? ((+ Filing by mail:)) Director's review requests must be filed with the director by filing online through the director's website, by fax, by mail, or in person.

(1) Director's review requests are considered filed when received in the director's review office in Olympia, Washington, during the office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Documents received in the director's review office in Olympia, Washington, outside of office hours or on a legal holiday will be deemed filed on the next business day.

(2) ((Filing by fax:

(a) Documents by fax are considered filed when a legible copy of the documents is received. If transmission begins after office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.

(b) Documents)) Director's review requests filed by fax must have a cover page identifying the addressee; the person making the transmission, including the address, telephone ((and fax)) number; and the review to which the documents ((relates; the date of transmission; and the total number of pages included in the transmission.

(c) The person attempting to file by fax bears the risk that the papers may not be timely received or legibly printed, regardless of the cause. If the fax is not legible, it will not be considered sent.

(3) Filing by electronic mail (email): If the document is sent after office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day)) are related.

(3) Director's review requests are considered filed when a legible copy of the documents is received in accordance with subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 05-01-191, filed 12/21/04, effective 7/1/05)

WAC 357-52-225 How must ((written documents)) appeal requests be filed with the board? ((+ Filing generally. Papers that must be filed with the board)) Appeal requests must be filed with the board by filing online through the board's website, by fax, by mail, or in person.

(1) Appeal requests are considered ((to be)) filed ((only)) when ((the papers are actually)) received in the board's office in Olympia, Washington, during the office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Documents received in the board's office in Olympia, Washington, outside of office hours or on a legal holiday will be deemed filed on the next business day.

(2) ((Filing by telephone facsimile:

(a) Written documents filed with the board by telephone facsimile are considered received when a legible copy of the document is reproduced on the board's telephone facsimile equipment in the board's office. If transmission begins after customary office hours, which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, the document will be deemed filed on the next business day.

(b) Any document filed with the board by telephone facsimile should be preceded by)) Appeals filed by fax must have a cover page identifying the addressee; the ((party)) person making the transmission, including the address, telephone ((and telephone facsimile)) number ((of such party)); and the appeal to which the documents ((relates; the date of transmission; and the total number of pages included in the transmission.

(c) The party attempting to file papers by telephone facsimile bears the risk that the papers will not be timely received or legibly printed, regardless of the cause. If the telephone facsimile is not legible, it will be considered as if it had never been sent.

(d) The original of any document filed by telephone facsimile should be mailed to the board within twenty-four hours of the time that the telephone facsimile was sent.

(e) The filing of papers by electronic mail ("email") is not authorized without the express prior approval of the board, and only under such circumstances as the board allows)) are related.

(3) Appeal requests are considered filed when a legible copy of the documents is received in accordance with subsection (1) of this section.

WSR 20-06-011
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed February 20, 2020, 12:30 p.m., effective May 1, 2020]

Effective Date of Rule: May 1, 2020.

Purpose: These changes stem from the new information technology professional structure (ITPS) implementation that went into effect on July 1, 2019. The proposed amendments to WAC 357-28-110 and 357-28-115 state that an employee who is promoted or is reallocated to a class with a higher salary range must advance to a step of the range for the new class that is nearest to five percent above their prepromotional or previous salary. The ITPS salary schedules for ranges 1-11 are not square, which mean [means] that the current two step promotional language does not work for those employees who move in and out of the ITPS. Additionally, the proposed amendments to WAC 357-28-110 and 357-28-115 address when an employee's prepromotional salary is set above the maximum for the new salary range. The purpose of the proposed amendment to WAC 357-28-110(2) is to clarify that if an employer grants a higher increase for internal alignment, retention or other business needs, it is done in accordance with WAC 357-28-090. The proposed amendments to WAC 357-46-035 is to break up subsections (2) through (4) and create new sections. The proposed new section WAC 357-46-036 is to address what happens if the employee does not have an option under WAC 357-46-035. This language was taken and removed from WAC 357-46-035(2). The proposed new section WAC 357-46-037 is to address what happens when a class in which the employee previously held permanent status has been revised or abolished. This language was taken and removed from WAC 357-46-035(3). The proposed new section WAC 357-46-038 is to address if an employee has layoff option rights to classes they held permanent status in prior to any breaks in state service. This language was taken and removed from WAC 357-46-035(4). The proposed amendment to WAC 357-58-040 is to clarify that manager positions or managerial employees that are included in the professional structures are excluded from Washington management service and are not covered by chapter 357-58 WAC.

Citation of Rules Affected by this Order: New WAC 357-46-036, 357-46-037 and 357-46-038; and amending WAC 357-28-110, 357-28-115, 357-46-035, and 357-58-040.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Other Authority: RCW 41.06.133.

Adopted under notice filed as WSR 20-02-088 on December 30, 2020 [2019].

Changes Other than Editing from Proposed to Adopted Version: Since the proposed version, WAC 357-28-115, 357-46-035, 357-46-036, and 357-46-037 were changed based on stakeholder feedback. WAC 357-28-115(1) was changed with a minor wording correction (changing the word "promoting" to "reallocated." WAC 357-46-035(1) was changed to correct the wording from "that meets the following criteria" to "when the following criteria are met." The last sentence in WAC 357-46-035 (2)(a) was removed because it is addressed in WAC 357-46-037. WAC 357-46-035 (2)(b) was

changed to a sentence structure from "in the lower class in order..." to "in a lower class of the series in order..." WAC 357-46-036(1) was changed due to a correction of sentence structure from "meets the following criteria" to "meets the criteria in the following order." WAC 357-46-037 was changed due to a sentence restructure from "...same or lower salary range maximum in accordance with..." to "...same or salary range maximum and meets the criteria in accordance with..."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 4, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 4, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 4, Repealed 0.

Date Adopted: February 20, 2020.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WAC 357-28-110 Must an employee who is promoted receive a salary increase? An employee who is promoted must (~~receive a minimum increase of two steps~~) advance to a step of the range for the new class that is nearest to five percent above their prepromotional salary, not to exceed step M of the salary range. If the employee's prepromotional salary is set above the maximum of the salary range in accordance with WAC 357-28-040, the promotional increase will be based off of the maximum of the salary range of the class the employee is promoting from. The employer may grant (~~more than an increase of two steps not to exceed step L~~) a higher increase if:

(1) Significant increases in duties and responsibilities, as documented by the employer, warrant greater compensation;

(2) The increase is necessary for internal salary alignment, retention of the employee(;) or other documented business needs in accordance with WAC 357-28-090; or

(3) The increase is necessary to bring the employee to the minimum of the salary range for the position.

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WAC 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase? An employee occupying a position that is reallocated to a class with a higher salary

range must ~~((receive a minimum increase of at least two steps))~~ advance to a step of the range for the new class that is nearest to five percent above their previous salary, not to exceed step M of the salary range in accordance with WAC 357-28-110. When the employee's previous salary was set above the maximum of the salary range in accordance with WAC 357-28-040, the employee's salary will be determined as follows:

(1) When the employee's previous salary is the same or lower than the maximum of the new salary range, the salary increase will be based off the maximum of the salary range the employee is reallocated from, not to exceed step M of the salary range in accordance with WAC 357-28-110.

(2) When the employee's previous salary is above the salary range of the new class, the employee will retain their current salary in accordance with WAC 357-28-040.

AMENDATORY SECTION (Amending WSR 19-11-134, filed 5/22/19, effective 7/1/19)

WAC 357-46-035 ~~((Layoff option.))~~ What option for placement in a position does a permanent employee have when the employee is scheduled for layoff? ~~((1) What option does a permanent employee have to take a position when the employee is scheduled for layoff?))~~

(1) The employer will identify a position, if available, within the layoff unit~~((;))~~ for a permanent employee who is scheduled for layoff ~~((must be offered the option to take a position, if available, that meets))~~ when the following criteria are met:

(a) The position is comparable to the employee's current position as defined by the employer's layoff procedure;

(b) For revised or abolished job classes, the employer must identify the closest matching class in accordance with WAC 357-46-037;

(c) The employee satisfies the competencies and other position requirements; and

(d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) The employer will consider positions in the following order:

(a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that has the same salary range maximum.

(b) If the employee ~~((has no))~~ does not have an option to take a position that has the same salary range maximum, the employee must be given an opportunity to take a position in a lower class in a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in ~~((the))~~ a lower class of the series in order to be offered the option to take a position in the class.

~~((b) The position is comparable to the employee's current position as defined by the employer's layoff procedure.~~

~~((c) The employee satisfies the competencies and other position requirements.~~

~~((d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.~~

~~(2) What if the employee has no option under subsection (1) of this section?~~

~~((a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:~~

~~((i) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;~~

~~((ii) The position is vacant or held by a probationary employee or an employee in a nonpermanent appointment;~~

~~((iii) The position is comparable or less than comparable; and~~

~~((iv) The position is one for which the employee meets the competencies and other position requirements.~~

~~((b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.~~

~~(3) What happens when a class in which the employee previously held permanent status has been revised or abolished?~~

~~((a) If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.~~

~~((b) For employees who held permanent status in abolished information technology (IT) classes, an employer may use the IT Assessment form along with any other documentation to determine the closest matching class to offer as a layoff option.~~

~~(4) Does an employee have layoff option rights as provided in subsection (1) of this section to classifications the employee held permanent status in prior to any breaks in state service?~~

~~General government employees have layoff option rights as provided in subsection (1) of this section to classifications the employee has held permanent status in regardless of any breaks in state service.~~

~~Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.)~~

NEW SECTION

WAC 357-46-036 What if the employee does not have an option under WAC 357-46-035? (1) If a permanent employee does not have an option available under WAC 357-46-035, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the criteria in the following order:

(a) The position is at the same or lower salary range maximum as the position from which the employee is being laid off;

(b) The position is vacant, held by a nonpermanent employee or held by a probationary employee;

(c) The position is comparable or less than comparable; and

(d) The position is one for which the employee meets the competencies and other position requirements.

(2) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

NEW SECTION

WAC 357-46-037 When identifying layoff options, what happens when a class in which the employee previously held permanent status has been revised or abolished? If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.

If an employee has previously held permanent status in any abolished information technology (IT) class and it has been determined that the closest matching class falls within the information technology professional structure (ITPS), the employee will have layoff options in any class within the ITPS with the same or lower salary range maximum and meets the criteria in accordance with WAC 357-46-035. To determine the closest matching class to offer, an employer may use the IT assessment form and any other documentation which will aid in determining the closest matching class.

NEW SECTION

WAC 357-46-038 Does an employee have layoff option rights as provided in WAC 357-46-035 to classes the employee held permanent status in prior to any breaks in state service? General government employees have layoff option rights as provided in WAC 357-46-035 to classes the employee has held permanent status in regardless of any breaks in state service.

Higher education employers must address in their layoff procedure whether or not employees will be given layoff options to classes they held permanent status in prior to any breaks in state service.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-040 ((Are there any)) Which manager positions or managerial employees ((that are not included in the)) are excluded from WMS and not covered by chapter 357-58 WAC? The following manager positions or managerial employees are excluded from WMS and not covered by chapter 357-58 WAC:

(1) Manager positions or managerial employees that are exempt from civil service ((and));

(2) Manager positions or managerial employees that are included in professional structures; and

(3) Manager positions or managerial employees of institutions of higher education and related boards ((are not included in WMS or covered by chapter 357-58 WAC)).

WSR 20-06-019 PERMANENT RULES PARAEDUCATOR BOARD

[Filed February 21, 2020, 2:28 p.m., effective March 23, 2020]

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

Purpose: The following amendment adds social and emotional learning standards to the paraeducator standards of practice. The amendment is in accordance with a requirement by the legislature. The final language is a result of paraeducator board review.

Citation of Rules Affected by this Order: Amending WAC 179-07-040.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 19-22-102 on November 6, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: January 15, 2020.

Jack Busbee
Associate Director

AMENDATORY SECTION (Amending WSR 18-16-105, filed 7/31/18, effective 8/31/18)

WAC 179-07-040 Knowledge and skill competencies for the standards of practice. The knowledge and skill competencies describe the standards of practice that paraeducators should exhibit when working with students. Competencies are associated with each standard.

(1) Supporting instructional opportunities:

(a) Knowledge competencies:

(i) Proficiency in basic reading, writing, and math skills;

(ii) Knowledge of basic computer applications (e.g., word processing, presentation, and spreadsheet applications), data collection, assessments and software applications to support K-12 education; and

(iii) Knowledge of one's own cultural identity and how it influences perceptions, values, and practices.

(b) Skill competencies:

(i) Demonstrate ability to assist in reviewing, preparing, delivering, and reinforcing district/school/classroom instructional outcomes (e.g., tutoring, individual and small group instruction) as directed by certificated/licensed staff;

(ii) Demonstrate ability to assist in recording and maintaining data as directed by certificated/licensed staff;

(iii) Demonstrate ability to assist in administration of assessments and monitoring student progress as directed by certificated/licensed staff; and

(iv) Demonstrate ability to utilize technology to support educational and safety outcomes as directed by certificated/licensed staff.

(2) Demonstrating professionalism and ethical practices:

(a) Knowledge competencies:

(i) Knowledge of the code of professional conduct for education and applicable district policies and procedures;

(ii) Knowledge of the distinctions in the roles and responsibilities of teachers, paraeducators, administrators, families, and other team members;

(iii) Knowledge of the need to protect civil and human rights pertaining to all students, families, and staff; and

(iv) Knowledge of the importance and purpose of confidentiality of student information.

(b) Skill competencies:

(i) Adhere to code of professional conduct and applicable district policies and procedures;

(ii) Pursue and participate in staff professional development and learning opportunities;

(iii) Adhere to and follow district's mission, policies, procedures, and personnel practices; and

(iv) Adhere to confidentiality as consistent with all applicable laws, regulations, policies, and procedures.

(3) Supporting a positive and safe learning environment:

(a) Knowledge competencies:

(i) Knowledge of child and adolescent developmental milestones/stages and potential early warning indicators (e.g., attendance, behavior, and academic progress);

(ii) Knowledge of strategies to create an equitable learning environment which fosters unique strengths and abilities of students being served; ~~((and))~~

(iii) Knowledge of behavioral support systems/strategies that create inclusive and safe learning environments; and

(iv) Knowledge of how to consider the well-being of others and a desire to contribute and support students, school, and community.

(b) Skill competencies:

(i) Demonstrate ability to assist students at appropriate developmental stages and report student concerns or risk factors to certificated staff or supervisor;

(ii) Demonstrate ability to implement behavior support systems/strategies as directed by certificated staff or supervisor;

(iii) Adhere to district prescribed health, safety, and emergency policies and school guidelines; ~~((and))~~

(iv) Demonstrate ability to follow and assist in monitoring career and technical education (CTE) program/class safety procedures as directed by district and/or instructor;

(v) Demonstrate an awareness of student emotion, and the skill to help direct and express a student's emotions, thoughts, impulses, and stress in constructive ways;

(vi) Demonstrate the ability to assist students to access family, school, and community resources of support; and

(vii) Demonstrate the ability to assist in the development of a student's sense of social and community responsibility.

(4) Communicating effectively and participating in the team process:

(a) Knowledge competencies:

(i) Knowledge of how multiple communication methods contribute to collaborative team work;

(ii) Knowledge of collaborative team strategies and decision making;

(iii) Knowledge of the need to respect individual differences among all students, families, and staff; and

(iv) Knowledge of the importance of giving and receiving feedback regarding student learning and/or personal performance.

(b) Skill competencies:

(i) Demonstrate ability to utilize various communication methods, problem solving skills, and collaboration strategies with staff, students, families and community;

(ii) Demonstrate ability to initiate and provide relevant feedback regarding job duties, performance tasks, and student learning outcomes; and

(iii) Demonstrate ability to apply feedback regarding student learning outcomes and/or personal performance.

(5) Demonstrating cultural competency aligned with standards developed by the professional educator standards board under RCW 28A.410.270:

(a) Knowledge competencies:

(i) Knowledge of and respect for different ethnic, cultural, abilities, and linguistic backgrounds of students, families, staff, and community being served;

(ii) Knowledge of strategies to support and maintain a culturally inclusive learning environment; and

(iii) Knowledge of student cultural histories and contexts, as well as family norms and values in different cultures.

(b) Skill competencies:

(i) Demonstrate ability to assist in implementing educational material which represents and supports various cultures and abilities of students being served as directed by certificated/licensed staff; and

(ii) Demonstrate ability to foster a culturally inclusive environment as directed by certificated/licensed staff or supervisor.

WSR 20-06-020**PERMANENT RULES****PARAEDUCATOR BOARD**

[Filed February 21, 2020, 3:16 p.m., effective March 23, 2020]

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

Purpose: The amended language adds a new section to Title 179 WAC that clearly articulates when the paraeducator certificate program must begin. This new language will assist implementation partners with training.

Citation of Rules Affected by this Order: New WAC 179-05-025.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 19-22-101 and 19-24-102 on November 6, 2019 and December 2, 2019.

Changes Other than Editing from Proposed to Adopted Version: Paraeducator board amended language to include "on or" in subsection (2) for this new WAC section.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

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

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

Date Adopted: January 15, 2020.

Jack Busbee
Associate Director

NEW SECTION

WAC 179-05-025 Start date of the paraeducator certificate program. (1) Beginning July 1, 2019, districts, or providers, may train educators on the paraeducator certificate program. Training completed before July 1, 2019, will not count towards completing continuing education credit hours of the paraeducator certificate program.

(2) The general paraeducator certificate may be attained with continuing education credit hours that were completed on or after July 1, 2019, and within five years prior to the date of application.

WSR 20-06-029
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Physical Therapy)

[Filed February 26, 2020, 9:08 a.m., effective March 28, 2020]

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

Purpose: WAC 246-915-010, 246-915-085, 246-915-180, 246-915-181, 246-915-310, and 246-915-370. The board of physical therapy (board) has adopted amendments to update the requirements for physical therapist supervision of assistive personnel as required under HB 2446 (chapter 222, Laws of 2018).

Citation of Rules Affected by this Order: Amending WAC 246-915-010, 246-915-085, 246-915-180, 246-915-181, 246-915-310, and 246-915-370.

Statutory Authority for Adoption: RCW 18.74.023.

Other Authority: Chapter 18.74 RCW and HB 2446 (chapter 222, Laws of 2018).

Adopted under notice filed as WSR 19-21-119 on October 18, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: January 7, 2020.

Renee Compton, PTA
Board Chair

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

WAC 246-915-010 Definitions. The definitions in this section apply throughout this chapter unless the context indicates otherwise:

(1) "Board" means the Washington state board of physical therapy.

(2) "CAPTE" means the commission on accreditation for physical therapy education.

(3) "Close supervision" means that the supervisor has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. The supervisor is continuously on-site and physically present in the operatory while the procedures are performed and capable of responding immediately in the event of an emergency.

(4) "Consultation" means a communication regarding a patient's evaluation and proposed treatment plan with an authorized health care practitioner.

~~((4))~~ (5) "Department" means the Washington state department of health.

~~((5))~~ (6) "Direct supervision" means the supervisor shall:

(a) Be continuously on-site and present where the person being supervised is performing services;

(b) Be immediately available to assist the person being supervised in the services being performed; and

(c) Maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel or is required to be directly supervised under RCW 18.74.180.

~~((6))~~ (7) "Indirect supervision" means the supervisor is not on the premises, but has given either written or oral instructions for treatment of the patient and the patient has been examined by the physical therapist at such time as

acceptable health care practice requires, and consistent with the particular delegated health care task.

~~((7))~~ (8) "NPTE" means the National Physical Therapy Examination.

~~((8))~~ (9) "Other assistive personnel" means other trained or educated health care personnel, not defined in subsection ~~((12))~~ (13)(a) or (b) of this section, who perform specific designated tasks that are related to physical therapy and within their license, scope of practice, or formal education, under the supervision of a physical therapist including, but not limited to, licensed massage therapists, licensed athletic trainers, and exercise physiologists. At the direction of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, other assistive personnel may be identified by the title specific to their license, training or education.

~~((9))~~ (10) "Physical therapist" means a person who meets all the requirements of this chapter and is licensed as a physical therapist under chapter 18.74 RCW.

~~((10))~~ (11) "Sharp debridement" means the removal of devitalized tissue from a wound with scissors, scalpel, and tweezers without anesthesia. Sharp debridement does not mean surgical debridement.

~~((11))~~ (12) "Spinal manipulation" includes spinal manipulation, spinal manipulative therapy, high velocity thrust maneuvers, and grade five mobilizations of the spine and its immediate articulations.

~~((12))~~ (13) "Trained supportive personnel" means:

(a) "Physical therapist assistant(~~(" An individual)")~~) means a person who meets all the requirements of this chapter and is licensed as a physical therapist assistant and who performs physical therapy procedures and related tasks that have been selected and delegated only by the supervising physical therapist; or

(b) "Physical therapy aide(~~(" An individual who is involved in direct physical therapy patient care who does not meet the definition of a physical therapist or physical therapist assistant and receives ongoing on-the-job training)")~~) means an unlicensed person who receives ongoing on-the-job training and assists a physical therapist or physical therapist assistant in providing physical therapy patient care and who does not meet the definition of a physical therapist, physical therapist assistant, or other assistive personnel. A physical therapy aide may directly assist in the implementation of therapeutic interventions, but may not alter or modify the plan of therapeutic interventions and may not perform any procedure or task which only a physical therapist may perform under this chapter.

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

WAC 246-915-085 Continuing competency. (1) Every two years, a physical therapist shall complete thirty-two hours of continuing education (CE) through any of the following means:

	CE Type	Maximum Hours Allowed	Documentation Requirements
a.	Participation in a course, live or online.	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.
b.	Live or recorded instructional electronic media that does not include specific goals and objectives relating to the practice of physical therapy.	Four hours	Instead of course goals, objectives and certificate of completion, the PT shall write and submit to the department a one-page synopsis in twelve-point font for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The PT shall write and submit to the department a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	Ten hours	The PT shall submit to the department an outline of presentation materials, date, and location of presentation.
e.	Written publication of original scholarly research or work published in a peer-review journal.	Ten hours	The PT shall submit to the department proof of publication which may include poster presentations.

	CE Type	Maximum Hours Allowed	Documentation Requirements
f.	Clinical instruction of physical ((therapist)) therapy students enrolled in a physical therapy educational program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	Ten hours	The PT shall obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. Each thirty-two hours of student mentorship equals one hour for purposes of CE credit.
g.	Completion of Option, which is a self-assessment tool created by the Federation of State Boards of Physical Therapy.	Five hours	The PT shall submit a copy of the completion certificate to the department.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PT's competence.	No limit	The PT shall submit a transcript to the department verifying courses taken. One quarter credit is equal to ten hours; one trimester is equal to twelve hours; and one semester credit is equal to fifteen hours.
i.	Participation in the use of the Federation of State Boards of Physical Therapy's aptitude continuing competence resource.	Two hours	The PT shall submit verification of completion by FSBPT.

	CE Type	Hours Allowed	Documentation Requirements
a.	Participation in a course, live or online.	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.
b.	Live or recorded instructional electronic media that does not include specific goals and objectives relating to the practice of physical therapy.	Four hours	Instead of course goals, objectives and certificate of completion, the PTA shall write and submit a one-page synopsis in twelve-point font for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The PTA shall write and submit a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	Ten hours	The PTA shall submit an outline of presentation materials, date, and location of presentation.
e.	Written publication of original scholarly research or work published in a peer-review journal.	Ten hours	The PTA shall submit proof of publication which may include poster presentations.

(2) Every two years a physical therapist who holds a spinal manipulation endorsement shall complete at least ten hours of continuing education directly related to spinal manipulation with at least five hours related to procedural techniques and application of spinal manipulation. For documentation, refer to the documentation required for the particular type of continuing education chosen. The hours spent completing spinal manipulation continuing education count toward meeting any applicable continuing competency requirements.

(3) Every two years, a physical therapist assistant shall complete twenty-four hours of continuing education through any of the following means:

	CE Type	Hours Allowed	Documentation Requirements
f.	Clinical instruction of physical therapist assistant students enrolled in a physical therapy assistant program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	Ten hours	The PTA shall obtain and submit to <u>the department</u> a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. ((For)) Each thirty-two hours of student mentorship ((equaling)) equals one hour for purposes of CE credit.
g.	Completion of Option, which is a self-assessment tool created by the Federation of State Boards of Physical Therapy.	Five hours	The PTA shall submit a copy of the completion certificate.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PTA's competence.	No limit	The PTA shall submit a transcript verifying courses taken. One quarter credit is equal to ten hours; one trimester credit is equal to twelve hours; and one semester credit is equal to fifteen hours.
i.	Participation in the use of the Federation of State Boards of Physical Therapy's aptitude continuing competence resource.	Two hours	The PTA shall submit verification of completion by FSBPT.

(4) Each physical therapist and physical therapist assistant shall complete a one-time, three hour suicide assessment training described in WAC 246-915-086.

(5) Every two years, each physical therapist and physical therapist assistant shall complete two hundred hours involving the application of physical therapy knowledge and skills which may be obtained in the clinical practice of physical therapy or in the nonclinical activities which include, but are not limited to, the following:

	Clinical Activities	Hours Allowed	Documentation
a.	Physical therapy clinical practice.	No limit	Documentation of physical therapy employment, the PT or PTA shall provide copies of employment records or other proof acceptable to the board of employment for the hours being reported.

	Nonclinical Activities	Hours Allowed (within the two hundred hours required)	Documentation
b.	Physical therapy teaching of: <ul style="list-style-type: none"> • Patient/client management, prevention and wellness. • Physical therapy ethics and standards of practice. • Professional advocacy/involvement. 	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
c.	Active service on boards or participation in professional or government organizations specifically related to the practice of physical therapy.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
d.	Developing course work in physical therapy schools or education programs or physical therapy continuing education courses.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
e.	Physical therapy research as a principal or associate researcher.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
f.	Physical therapy consulting.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
g.	Management of physical therapy services.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-180 Professional conduct principles.

(1) The patient's lawful consent is to be obtained before any information related to the patient is released, except to the consulting or referring authorized health care practitioner (~~(and/or)~~ or an authorized governmental agency(s).

(a) Physical therapists are responsible for answering legitimate inquiries regarding a patient's physical dysfunction and treatment progress, and

(b) Information is to be provided by physical therapists and physical therapist assistants to insurance companies for billing purposes only.

(2) Physical therapists and physical therapist assistants are not to compensate or to give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity in a news item. A paid advertisement is to be identified as such unless it is apparent from the context it is a paid advertisement.

(3) It is the physical therapist's and physical therapist assistant's responsibility to report any unprofessional, incompetent or illegal acts that are in violation of chapter 18.74 RCW or any rules established by the board.

(4) It is the physical therapist's and physical therapist assistant's responsibility to recognize the boundaries of his or her own professional competencies and that he or she uses only those in which he or she can prove training and experience.

(5) Physical therapists and physical therapist assistants shall recognize the need for continuing education and shall be open to new procedures and changes.

(6) It is the physical therapist's and physical therapist assistant's responsibility to represent his or her academic credentials in a way that is not misleading to the public.

(7) It is the responsibility of the physical therapist and physical therapist assistant to refrain from undertaking any activity in which his or her personal problems are likely to lead to inadequate performance or harm to a client (~~(and/or)~~ or colleague).

(8) A physical therapist and physical therapist assistant shall not use or allow to be used any form of public communication or advertising connected with his or her profession or in his or her professional capacity as a physical therapist which:

(a) Is false, fraudulent, deceptive, or misleading;

(b) Guarantees any treatment or result; or

(c) Makes claims of professional superiority.

(9) Physical therapists and physical therapist assistants are to recognize that each individual is different from all other individuals and to be tolerant of and responsive to those differences.

(10) Physical therapists shall not receive reimbursement for evaluating or treating him or herself.

(11) Physical therapists shall only delegate physical therapy tasks to trained supportive personnel as defined in WAC 246-915-010 (~~((4))~~) (13)(a) and (b).

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

WAC 246-915-181 Supervision responsibilities.

A physical therapist is professionally and legally responsible for patient care given by assistive personnel under his or her supervision. If a physical therapist fails to adequately supervise patient care given by assistive personnel, the board may take disciplinary action against the physical therapist.

(1) Regardless of the setting in which physical therapy services are provided, only the licensed physical therapist may perform the following responsibilities:

(a) Interpretation of referrals;

(b) Initial examination, problem identification, and diagnosis for physical therapy;

(c) Development or modification of a plan of care that is based on the initial examination and includes the goals for physical therapy intervention;

(d) Determination of which tasks require the expertise and decision-making capacity of the physical therapist and shall be personally rendered by the physical therapist, and which tasks may be delegated;

(e) Assurance of the qualifications of all assistive personnel to perform assigned tasks through written documentation of their education or training that is maintained and available at all times;

(f) Delegation and instruction of the services to be rendered by the physical therapist, physical therapist assistant, or physical therapy aide including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures;

(g) Timely review of documentation, reexamination of the patient, and revision of the plan of care when indicated;

(h) Establishment of a discharge plan.

(2) (~~(Supervision)~~) If patient care given by the physical therapist assistant, or other assistive personnel, supervision by the physical therapist requires that the patient reevaluation is performed:

(a) The later of every fifth visit (, or if treatment is performed more than five times per week, reevaluation must be performed at least once a week) or every thirty days if a physical therapist has not treated the patient for any of the five visits or within the thirty days;

(b) When there is any change in the patient's condition not consistent with planned progress or treatment goals.

(3) Patient reexamination means the licensed physical therapist shall physically observe and interview the patient and reexamine the patient as necessary during an episode of care to evaluate progress or change in patient status and modify the plan of care accordingly or discontinue physical therapy services.

(4) For patient reevaluations the licensed physical therapist shall at a minimum visually see the patient.

(5) Supervision of assistive personnel means:

(a) Physical therapist assistants may function under direct or indirect supervision;

(b) Physical therapy aides shall function under direct supervision at all times. Other assistive personnel must function under direct supervision when treating a patient under a physical therapy plan of care;

(c)(i) Except as provided in (c)(ii) of this subsection, at any one time, the physical therapist may supervise up to a total of ~~((two))~~ three assistive personnel, who may be physical therapist assistants, other assistive personnel, or physical therapy aides. If the physical therapist is supervising the maximum of three assistive personnel at any one time

~~((d))~~, no more than one of the assistive personnel may be a physical therapy aide. The physical therapist has the sole discretion, based on the physical therapist's clinical judgment, to determine whether to utilize assistive personnel to provide services to the patient;

(ii) A physical therapist working in a nursing home as defined in RCW 18.51.010 or in the public schools as defined in RCW 28A.150.010, may supervise a total of only two assistive personnel at any one time;

(iii) In addition to the ~~((two))~~ assistive personnel authorized in (c)(i) and (ii) of this subsection, the physical therapist may supervise a total of two persons who are pursuing a course of study leading to a degree as a physical therapist or a physical therapist assistant.

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

WAC 246-915-310 Terms used in WAC 246-915-300 through 246-915-330. (1) "Monitoring contract" is a comprehensive, structured agreement between the recovering physical therapist or physical therapist assistant and WRAMP defining the requirements of the physical therapist or physical therapist assistant program participation.

(2) "Approved treatment facility" is a facility certified by the ~~((division of behavioral health and recovery (DBHR),))~~ department ~~((of social and health services, according to chapters 388-877 through 388-877B WAC that meets the defined standards))~~ under chapter 246-341 WAC. Drug and alcohol treatment facilities located out-of-state must have substantially equivalent standards.

(3) "Substance abuse" or "substance use disorder" means a chronic progressive illness that involves the use of alcohol or other drugs to a degree that it interferes with the functional life of the PT or PTA, as manifested by health, family, job (professional services), legal, financial, or emotional problems.

(4) "Aftercare" means a period of time after intensive treatment that provides the physical therapist or physical therapist assistant and the physical therapist's or physical therapist assistant's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.

(5) "Support group" is a group of health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced health care professional facilitator in which physical therapists or physical therapist assistants may safely discuss drug diversion, licensure issues, return to work and other professional issues related to recovery.

(6) "Recovery-oriented group" means a group such as alcoholics anonymous, narcotics anonymous, and related organizations based on a philosophy of anonymity, belief in a

power outside of oneself, a peer group association, and self-help.

(7) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids and other biologic specimens, which are performed at irregular intervals not known in advance by the person being tested.

(8) "Health care professional" is an individual who is licensed, certified or registered in Washington to engage in the delivery of health care to patients.

(9) "WRAMP" is the approved substance abuse monitoring program as described in RCW 18.130.175 that meets criteria established by the board. WRAMP does not provide evaluation or treatment services.

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

WAC 246-915-370 Electroneuromyographic examinations education and training. A physical therapist may perform electroneuromyographic (EMG) examinations, which may include needle EMG and nerve conduction studies, to test neuromuscular function only if the physical therapist has received a referral from an authorized health care practitioner identified in RCW 18.74.010(1) and only upon demonstrating education and training in EMG examinations. The performance of tests of neuromuscular function includes the performance of electroneuromyographic examinations. The board will accept the following as evidence of education and training:

~~((1))~~ A minimum of four hundred hours of instruction in electroneuromyographic examinations including at least two hundred needle EMG studies under direct supervision from a qualified provider. A qualified provider includes a physical therapist with board certification in clinical electrophysiology from the American Board of Physical Therapy Specialties, a neurologist, or a physiatrist~~((or~~

~~((2) A person who is board certified in clinical electrophysiology from the American Board of Physical Therapy Specialties meets the requirements of this section)).~~

WSR 20-06-034

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed February 27, 2020, 8:00 a.m., effective March 29, 2020]

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

Purpose: The agency is amending WAC 182-531-1550 to remove coverage of hysteroscopic sterilizations. The Federal Drug Administration restricted the sale and distribution of the Class III contraceptive device used in this procedure.

Citation of Rules Affected by this Order: Amending WAC 182-531-1550.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 20-03-028 on January 7, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: February 27, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-16-008, filed 7/25/13, effective 9/1/13)

WAC 182-531-1550 Sterilization physician-related services. (1) For purposes of this section, sterilization is any medical procedure, treatment, or operation for the purpose of rendering a client permanently incapable of reproducing.

Hysterectomy results in sterilization and is not covered by the medicaid agency solely for that purpose. (See WAC 182-531-0150 and 182-531-0200 for more information about hysterectomies.)

STERILIZATION

(2) The ~~((medicaid))~~ agency covers sterilization when all of the following apply:

- (a) The client is at least eighteen years of age at the time an agency-approved consent form is signed;
- (b) The client is a mentally competent individual;
- (c) The client participates in a medical assistance program (see WAC 182-501-0060);
- (d) The client has voluntarily given ~~((informed consent))~~ informed consent; and
- (e) The date the client signed a sterilization consent is at least thirty days and not more than one hundred eighty days before the date of the sterilization procedure.

(3) Any medicaid provider who is licensed to do sterilizations within their scope of practice may provide vasectomies and tubal ~~((ligations))~~ sterilizations to any medicaid client. ~~((See subsections (10), (11), and (12) of this section for additional qualifications of providers performing hysteroscopic sterilizations.))~~

(4) The ~~((medicaid))~~ agency requires at least a seventy-two hour waiting period rather than the usual thirty-day waiting period for sterilization in either of the following circumstances:

- (a) At the time of a premature delivery when the client gave consent at least thirty days before the expected date of delivery. (The expected date of delivery must be documented on the consent form.)
 - (b) For emergency abdominal surgery. (The nature of the emergency must be described on the consent form.)
- (5) The ~~((medicaid))~~ agency waives the thirty-day consent waiting period for sterilization when the client requests

that sterilization be performed at the time of delivery and completes a sterilization consent form. One of the following circumstances must apply:

- (a) The client became eligible for ~~((medical assistance))~~ medical assistance during the last month of pregnancy;
- (b) The client did not obtain medical care until the last month of pregnancy; or
- (c) The client was a substance abuser during pregnancy, but is not using alcohol or illegal drugs at the time of delivery.
- (6) The ~~((medicaid))~~ agency does not accept informed consent obtained when the client is:
 - (a) In labor or childbirth;
 - (b) In the process of seeking to obtain or obtaining an abortion; or
 - (c) Under the influence of alcohol or other substances, including pain medications for labor and delivery, that affects the client's state of awareness.

(7) The ~~((medicaid))~~ agency has certain consent requirements that the provider must meet before the agency reimburses sterilization of an institutionalized client or a client with mental incompetence. The agency requires both of the following:

- (a) A court order, which includes both a statement that the client is to be sterilized, and the name of the client's legal guardian who will be giving consent for the sterilization; and
- (b) A sterilization consent form signed by the legal guardian, sent to the agency at least thirty days before the procedure.

(8) The ~~((medicaid))~~ agency reimburses epidural anesthesia in excess of the six-hour limit for deliveries if sterilization procedures are performed in conjunction with or immediately following a delivery.

- (a) For reimbursement, anesthesia time for sterilization is added to the time for the delivery when the two procedures are performed during the same operative session.
- (b) If the sterilization and delivery are performed during different operative sessions, the anesthesia time is calculated separately.

(9) The ~~((medicaid))~~ agency reimburses all attending providers for the sterilization procedure only when the provider submits an agency-approved and complete consent form with the claim for reimbursement. ~~((See subsections (10), (11), and (12) of this section for additional coverage criteria for hysteroscopic sterilizations.))~~

(a) The physician must complete and sign the physician statement on the consent form within thirty days of the sterilization procedure.

(b) The agency reimburses attending providers after the procedure is completed.

~~((HYSTEROSCOPIC STERILIZATIONS))~~

~~((10) The medicaid agency pays for hysteroscopic sterilizations when the following additional criteria are met:~~

- ~~((a) A device covered by the agency is used.~~
- ~~((b) The procedure is predominately performed in a clinical setting, such as a physician's office, without general anesthesia and without the use of a surgical suite; and is covered according to the corresponding agency fee schedule.~~

~~(c) If determining that it is medically necessary to perform the procedure in an inpatient rather than outpatient setting, a provider must submit clinical notes with the claim, documenting the medical necessity.~~

~~(d) The client provides informed consent for the procedure.~~

~~(e) The hysteroscopic sterilization is performed by an approved provider who:~~

~~(i) Has a core provider agreement with the agency;~~

~~(ii) Is nationally board certified in obstetrics and gynecology (OB-GYN);~~

~~(iii) Is privileged at a licensed hospital to do hysteroscopies;~~

~~(iv) Has successfully completed the manufacturer's training for the device covered by the agency;~~

~~(v) Has successfully performed a minimum of twenty hysteroscopies; and~~

~~(vi) Has established screening and follow-up protocols for clients being considered for hysteroscopic sterilization.~~

~~(11) To become approved for hysteroscopic sterilizations, interested providers must send the medicaid agency-approved vendor, identified in the agency's billing instructions, the following:~~

~~(a) Documentation of successful completion of the manufacturer's training;~~

~~(b) Documentation demonstrating privilege at a licensed hospital to perform hysteroscopies;~~

~~(c) Documentation attesting to having successfully performed twenty or more hysteroscopies;~~

~~(d) Evidence of valid National Board Certification; and~~

~~(e) Office protocols for screening and follow-up.~~

~~(12) The provider will not be paid to perform the hysteroscopic procedure until the medicaid agency sends written approval to the provider.))~~

WSR 20-06-036

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed February 27, 2020, 8:46 a.m., effective March 29, 2020]

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

Purpose: These amended sections in chapter 308-127 WAC allow the salesperson license to become inactive when a licensee disassociates from their employer. The license will belong to the licensee and the licensee can be invited to work for timeshare companies. These amendments also repeal sections in chapter 308-127 WAC as they are duplicative or may have different meaning than the overall agency chapter 308-08 WAC.

Citation of Rules Affected by this Order: Repealing WAC 308-127-310 Application of brief adjudicative proceedings and 308-127-320 Preliminary record in brief adjudicative proceedings, 308-127-330 Conduct of brief adjudicative proceedings; and amending WAC 308-127-040 Materially adverse change, 308-127-160 Fees, 308-127-210 Relationship of timeshare promoters and salespersons and real estate brokers and salespersons, and 308-127-225 Original application, renewal, termination, and fees for a timeshare salesperson registration.

Statutory Authority for Adoption: RCW 64.36.270 and 43.24.023.

Adopted under notice filed as WSR 19-21-036 on October 8, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 3.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 3.

Date Adopted: February 27, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-07-023, filed 3/14/90, effective 4/14/90)

WAC 308-127-040 Materially adverse change. (1) A materially adverse change means any change in the condition of a promoter or its affiliates which causes or might cause loss or risk of loss to the interests of the timeshare purchasers or prospective purchasers.

A materially adverse change occurs under circumstances which include, but are not limited to, the following:

(a) Any bulk sale of all or a significant portion of the timeshare properties;

(b) Any actual or threatened bankruptcy, receivership, or similar proceeding involving the promoter or its affiliates;

(c) Any lien, encumbrance, or similar circumstance which threatens to affect, or does affect, any of the timeshare properties;

(d) Any sale, lease, substitution of, or addition to the inventory of the timeshare properties by the promoter or its affiliates;

(e) Any amendment or change in the timeshare instruments or the timeshare program;

(f) Any change in the affiliation of the promoter or the association with a timeshare exchange company;

(g) Any change in the promoter's or an affiliate's plan of promotion;

(h) Any change in the status of an escrow, trust, bond, letter of credit, impound or other protective device, being utilized in the timeshare program for purposes of purchaser protection;

(i) Any criminal prosecution, civil lawsuit, or administrative proceeding in which the promoter or its affiliates are parties;

(j) Sell-out of the number of intervals registered to be sold to persons residing in the state of Washington;

(k) Any change in the financial status of the promoter or its affiliates that might adversely affect their ability to pay the timeshare expenses, including reserve accounts, during marketing of the timeshares.

(2) Materially adverse changes shall be reported to the agency for purposes of amending or renewing the registration and the public offering statement at the time they are known or proposed by the promoter or its affiliates. Failure to report such changes within 20 days shall result in the assessing of a \$500.00 ((penalty)) late fee and shall be cause for suspension, revocation, or denial of a registration.

AMENDATORY SECTION (Amending WSR 04-19-040, filed 9/13/04, effective 11/1/04)

WAC 308-127-160 Fees. The following fees shall be charged under the authority of RCW 64.36.081 and 43.24.086:

- (1) Registration application fees:
 - Start up timeshare program including one project. \$1000.00
 - Each additional project in program. 200.00
 - Each apartment unit in program. 10.00
 - The first unit of personal property in the timeshare program. 500.00
 - Each additional unit of personal property in the timeshare program. 100.00
 - Businesses of listing or brokering resale intervals. 500.00
- (2) Interval Fees:
 - For each interval through one thousand. 1.00
 - Intervals beyond one thousand. 0.00
 - Each monthly filing of listings of resale intervals (in lieu of interval fees for resale intervals). 10.00
- (3) Renewal fees:
 - Timeshare program including one project. 500.00
 - Late renewal fee for timeshare program. 2000.00
 - Each additional project to a maximum of five projects. 200.00
 - Each apartment unit - to maximum of twenty-five apartment units. 10.00
- (4) Consolidation fees:
 - Each additional project added. 200.00
 - Each additional apartment unit. 10.00
 - The first additional unit of personal property being consolidated. 250.00
 - Each additional unit of personal property added in one consolidation. 100.00
- (5) Exemption fees:

- Programs consisting of a single apartment unit in a single project with fifty-two or fewer intervals. 250.00
- All other types of programs. 1000.00
- (6) Impound fees:
 - Initial establishment of an impound, escrow, trust, or other arrangement requiring a depository. 500.00
 - Each required periodic report. 50.00
- (7) Advertising fees:
 - Each initial submission of advertisement whether or not submitted in a timely manner, and whether or not in use at the time of payment. 25.00
 - Examination of advertisement which are for the purpose of marketing surveys and not involving an examination of project or program instruments. 150.00
- (8) Fees for persons in the business of offering commercial promotional programs:
 - Registration of individual. 500.00
- (9) Salespersons fees:
 - ~~((Registration))~~ Initial application, including first timeshare company association. 25.00
 - ~~((Renewal))~~ Each timeshare company association after the first. 25.00
 - ~~((Transfer))~~ Renewal. 25.00 per timeshare company association
- (10) Fees for amendment of registration:
 - For a timely submission of an amendment filing. 25.00
 - ~~((Penalty))~~ Late fee for failure to file an amendment within twenty days of the occurrence of a materially adverse change. 500.00
- (11) Inspection fees:
 - Applicants and registrants shall pay the cost of inspections conducted pursuant to chapter 64.36 RCW. The inspection fees shall be paid prior to the granting of a registration or consolidation. The inspection fee shall be the actual cost to the department for conducting of the inspection.

AMENDATORY SECTION (Amending WSR 90-07-023, filed 3/14/90, effective 4/14/90)

WAC 308-127-210 Relationship of timeshare promoters and salespersons and real estate brokers and salespersons. (1) ~~((A))~~ An active timeshare salesperson registration shall be ((registered to a specific)) associated with

one or more timeshare promoters who ~~((has))~~ have one or more timeshare offerings registered in this state. The promoter shall have full responsibility for all activities of the promoter's timeshare salesperson which relate to offering timeshares for sale.

(2) An active real estate broker or salesperson may act as the brokerage agent of one or more timeshare promoters without registering as a timeshare salesperson. However, this exemption from registration as a timeshare salesperson applies only when the exempted person is performing real estate brokerage in compliance with chapter 18.85 RCW. Further, this exemption only pertains to the timeshare salesperson registration requirement. All other provisions of the Timeshare Act apply to real estate brokers and salespersons offering timeshares for sale.

(3) A natural person may be registered as a timeshare salesperson while licensed as a real estate broker or salesperson. However, the salesperson shall conduct timeshare activities and maintain associated business records separate and apart from his or her real estate broker or salesperson activities and records. The term "separate and apart" shall not preclude location of timeshare salesperson and real estate brokerage activities at the same office.

(4) Any individual who is registered as a timeshare salesperson and licensed as a real estate broker or salesperson shall disclose in writing to the recipient of a timeshare sales offer whether he or she is acting as the timeshare salesperson of a promoter or a real estate broker or salesperson at the time he or she presents the public offering statement.

AMENDATORY SECTION (Amending WSR 04-08-003, filed 3/24/04, effective 4/24/04)

WAC 308-127-225 Original application, renewal, ~~((termination))~~ inactivity, and fees for a timeshare salesperson registration. (1) An individual shall apply for registration as a timeshare salesperson on a form prescribed by the agency. The registration application for a timeshare salesperson shall identify the specific promoter responsible for the business activities of the salesperson and shall be valid for a period of one year.

(2) When a timeshare salesperson ceases to be employed by a timeshare promoter, the salesperson's registration shall be ~~((terminated))~~ set to an inactive status. Written notice of this ~~((termination))~~ cessation shall be given by the promoter to the ~~((director. A terminated))~~ department. An individual with an inactive timeshare salesperson license who desires to work for the same or another promoter shall ~~((apply for and receive registration as a timeshare salesperson))~~ register a new association with the department before engaging in further timeshare sales activities.

(3) An individual may renew his timeshare salesperson registration for one year if the agency receives the individual's request and renewal fee on or before the expiration of the individual's existing registration. The effective date of the renewal shall be the anniversary date of the previous registration. If the registration is not renewed before the expiration date reregistration is required before timeshare sales activity may be continued.

(4) An application for registration or a renewal of registration is not complete unless it is accompanied by the proper fee. Payment of the fee with a check which is subsequently dishonored is a deficient application. Upon notification to the promoter by the agency, the promoter shall cease employment of the applicant as a timeshare salesperson.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-127-310 Application of brief adjudicative proceedings.

WAC 308-127-320 Preliminary record in brief adjudicative proceedings.

WAC 308-127-330 Conduct of brief adjudicative proceedings.

WSR 20-06-039

PERMANENT RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed February 27, 2020, 3:16 p.m., effective March 29, 2020]

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

Purpose: To clarify what positions are eligible for membership in the law enforcement officers' and firefighters' retirement system.

Citation of Rules Affected by this Order: Amending WAC 415-104-225.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 20-03-170 on January 22, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: February 27, 2020.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 16-08-007, filed 3/24/16, effective 4/24/16)

WAC 415-104-225 Am I a LEOFF member? If you are employed by an employer as a full-time, fully compensated law enforcement officer or firefighter, you are required to be a LEOFF member.

(1) Law enforcement officers.

(a) You are a law enforcement officer only if you are commissioned and employed on a full-time, fully compensated basis as a:

- (i) City police officer;
- (ii) Town marshal or deputy marshal;
- (iii) County sheriff;
- (iv) Deputy sheriff, if you passed a civil service exam for deputy sheriff and you possess all of the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff;

(b) Effective January 1, 1994, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a:

- (i) General authority Washington peace officer under RCW 10.93.020(3);
- (ii) Port district general authority law enforcement officer and you are commissioned and employed by a port district general authority law enforcement agency;
- (iii) State university or college general authority law enforcement officer; or

(c) Effective January 1, 1993, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a public safety officer or director of public safety of a city or town if, at the time you first became employed in this position, the population of the city or town did not exceed ten thousand. See RCW 41.26.030(3).

(d) If you meet the requirements of (a), (b) or (c) of this subsection, you qualify as a law enforcement officer regardless of your rank or status as a probationary or permanent employee.

(e) You are not a law enforcement officer if you are employed in either:

- (i) A position that is clerical or secretarial in nature and you are not commissioned; or
- (ii) A corrections officer position and the only training required by the Washington criminal justice training commission for your position is basic corrections training under WAC 139-10-210.

(2) Firefighters.

(a) You are a firefighter if you are employed in a uniformed firefighter position by a fire department of an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires. The primary duty of a position is defined by what is expected of the full-time position, not by the number of hours or percentage of hours that the duty is performed.

Example A: A full-time position in a fire department of an employer is responsible for preventing, controlling, and extinguishing fires. The employer rarely has fires. The posi-

tion spends the majority of its time performing other fire protection activities. The position is a firefighter.

Example B: A fire department of an employer has a full-time fire marshal position or firefighter trainer position. The position requires the legal authority and responsibility to perform fire protection activities. The position is a firefighter.

Example C: An employer's community development department has a fire marshal position. The community development department is not a fire department and its purpose is not fire protection activities. The position is not a firefighter.

(i) "Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling and extinguishing fires.

(ii) You are a firefighter if you qualify as supervisory firefighter personnel.

(A) To qualify as "supervisory firefighter personnel" you must:

(I) Supervise firefighters or other supervisory firefighter personnel;

(II) Be in a position located within a firefighting department or organization whose primary or sole purpose is fire protection activities; and

(III) Direct fire protection activities.

(B) This includes first line supervisors of firefighters, who typically direct from the scene of a fire, up to and including positions that are administrative in nature when the primary duty is to provide executive leadership for fire protection activities, such as setting strategic priorities for the organization.

Example A: A City Administrator supervises various city departments including a fire department. The City Administrator supervises the Fire Chief, who is a firefighter, as well as other department heads. The City Administrator would not be considered supervisory firefighter personnel because, while the duties of the position include oversight of the fire department, it is not the primary duty of the position. Furthermore, the position is not located within a firefighting department or organization whose primary or sole purpose is fire protection activities.

Example B: A Fire Chief of a large fire department does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the Fire Department. The Fire Chief supervises three battalion chiefs, a Human Resources Director, and a Chief Financial Officer. The Fire Chief is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose sole purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

Example C: An Administrator of an organization whose primary purpose is fire protection activities does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the organization. The Admin-

istrator supervises two Battalion Chiefs, a Human Resources Director, and a Chief Financial Officer. The Administrator is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose primary purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

(iii) If your employer requires firefighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to qualify as a firefighter unless you qualify as supervisory firefighter personnel.

(iv) You are a firefighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title.

(v) You do not qualify for membership as a firefighter if you are a volunteer firefighter or resident volunteer firefighter.

(b) You are a firefighter if you are employed on a full-time, fully compensated basis by an employer as an emergency medical technician (EMT). To be an "emergency medical technician" you must:

(i) Be certified by the department of health to perform emergency medical services at the level of care of an EMT; and

(ii) Complete the requirements of your employer, if any, to perform the job duties of an EMT.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Commissioned" - WAC 415-104-011.
- (b) "Director of public safety" - WAC 415-104-011.
- (c) "Employer" - RCW 41.26.030.
- (d) "Firefighter" - RCW 41.26.030.
- (e) "Full time" - WAC 415-104-011.
- (f) "Fully compensated" - WAC 415-104-011.
- (g) "Law enforcement officer" - RCW 41.26.030.
- (h) "Member" - RCW 41.26.030.
- (i) "Public safety officer" - WAC 415-104-011.
- (j) "Uniformed firefighter position" - WAC 415-104-011.

**WSR 20-06-040
PERMANENT RULES
DEPARTMENT OF**

RETIREMENT SYSTEMS

[Filed February 27, 2020, 3:18 p.m., effective March 29, 2020]

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

Purpose: Implementing chapter 102, Laws of 2019 (HB 1408), revising the written consent requirement for survivor benefit options; and clarifying the impact to the benefit if a survivor predeceases the retiree.

Citation of Rules Affected by this Order: Repealing WAC 415-104-211, 415-108-324 and 415-110-324; and amending WAC 415-02-380, 415-104-202, 415-104-215, 415-106-500, 415-106-600, 415-106-610, 415-108-326, 415-

108-436, 415-110-436, 415-110-610, 415-112-504, 415-112-505, 415-112-507, 415-103-215, and 415-103-225.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 20-03-171 on January 22, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 3.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 15, Repealed 3.

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

Date Adopted: February 27, 2020.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-02-380 How will my retirement benefit be affected if I choose a ~~((benefit option with a survivor feature))~~ survivor option? ~~((This section applies to LEOFF Plans 1 and 2; PERS Plans 1, 2, and 3; PSERS; SERS Plans 2 and 3; TRS Plans 1, 2, and 3; and WSPRS Plans 1 and 2.))~~ If you choose a survivor benefit option, your benefit will be affected as described in this section.

(1) **What is a survivor ~~((feature))~~ benefit option?** A survivor ~~((feature is a))~~ benefit option ~~((that provides))~~ will pay a lifetime monthly benefit ~~((for))~~ to your survivor beneficiary after your death.

(2) **What is a survivor beneficiary?** A survivor beneficiary is the person you ~~((name at the time of retirement))~~ designate to receive a lifetime monthly benefit after your death.

(3) **What benefit options ~~((include a survivor feature))~~ are available?** All available benefit options, including survivor benefit options, are described in detail for each system and plan in the following state laws and ~~((regulations))~~ agency rules:

LEOFF Plan 1:	RCW 41.26.164	WAC 415-104-202
LEOFF Plan 2:	RCW 41.26.460	WAC 415-104-215
PERS Plan 1:	RCW 41.40.188	WAC 415-108-326
PERS Plan 2:	RCW 41.40.660	WAC 415-108-326
PERS Plan 3:	RCW 41.40.845	WAC 415-108-326
PSERS:	RCW 41.37.170	WAC 415-106-600
SERS Plans 2 and 3:	RCW 41.35.220	WAC 415-110-610
TRS Plan 1:	RCW 41.32.530	WAC 415-112-504
TRS Plan 2:	RCW 41.32.785	WAC 415-112-505
TRS Plan 3:	RCW 41.32.851	WAC 415-112-505

WSPRS Plan 1: RCW 43.43.278 WAC 415-103-215
 WSPRS Plan 2: RCW 43.43.271 WAC 415-103-225

(4) How will selecting a survivor benefit option (~~with a survivor feature~~) affect my monthly retirement benefit? If you select a survivor benefit option (~~(that has a survivor feature)~~) your monthly retirement benefit will be (~~(actuarially)~~) reduced to offset the cost of (~~(the survivor feature)~~) potentially paying the benefit for a longer period of time. The reduction will be based on survivor option factors that are available on the DRS website.

(5) Does my survivor beneficiary's age affect how much my monthly retirement benefit will be reduced? Yes. Your survivor beneficiary's age is used in determining the amount of your monthly retirement benefit and the benefit of your survivor beneficiary. The younger the survivor beneficiary, the longer (~~(he or she is)~~) they are expected to receive a benefit. Your monthly benefit will be reduced accordingly.

(a) Example:

Kendra, a PERS Plan 2 member, chooses Option 3 (joint and 50 percent survivorship) at retirement. Her monthly Option 1 nonsurvivor benefit amount (~~(before adding a survivor option feature)~~), which would stop at the time of her death, is \$2,000.00. She names her nephew, Steve, as her survivor beneficiary. This means, if Kendra dies before Steve, Steve will receive a monthly benefit equal to half the amount Kendra was receiving. Steve is 30 years younger than Kendra. The department will (~~(calculate the adjustment to)~~) reduce Kendra's monthly retirement benefit (~~(by)~~) using the survivor option factor (~~(associated with a 30-year age difference in which the member is)~~) for a member who is 30 years older than the beneficiary. For illustration purposes in this example only, we will use 0.776 as the corresponding Option 3 benefit factor (actuarial factors change periodically). As a result, Kendra's Option 3 monthly benefit amount will be \$1,552.00 (\$2,000.00 x 0.776).

(b) Example:

Mark, a LEOFF Plan 2 member, chooses Option 2 (joint and 100 percent survivorship) at retirement. His monthly Option 1 nonsurvivor benefit amount (~~(before adding a survivor option feature)~~), which would stop at the time of his death, is \$2,000.00. He names his wife, Susan, as his survivor beneficiary. This means, if Mark dies before Susan, Susan will receive a monthly benefit equal to the amount Mark was receiving. Mark is five years younger than Susan. The department will (~~(calculate the adjustment to)~~) reduce Mark's monthly retirement benefit (~~(by)~~) using the survivor option factor (~~(that corresponds with a 5-year age difference in which the member is)~~) for a member who is five years younger than the beneficiary. For illustration purposes in this example only, we will use 0.898 as the corresponding Option 2 benefit factor (actuarial factors change periodically). As a result, Mark's Option 2 monthly benefit amount will be \$1,796.00 (\$2,000.00 x 0.898).

(6) What if my survivor beneficiary passes away before I do? If you are receiving a reduced benefit with a survivor option and your survivor passes away before you do, you may request to have your benefit increased to the Option 1 nonsurvivor amount. Your benefit increase will be effective

the first of the month following your survivor's passing. DRS may require a copy of your survivor's certified death certificate.

(a) How will my new benefit amount be calculated?

(i) If you retired on or after January 1, 1996, and are not a member of LEOFF Plan 1, or if you are a member of WSPRS Plan 1 regardless of your retirement date, your new benefit amount will be calculated as follows:

Your original Option 1 nonsurvivor benefit amount
 + the sum of Cost of Living Adjustments (COLAs) added
 to your benefit prior to your survivor's death

(ii) If you retired prior to January 1, 1996, and are not a member of WSPRS Plan 1, or if you are a member of LEOFF Plan 1 regardless of your retirement date, your new benefit amount will be calculated as follows:

Benefit Amount ÷ the Administrative Factor

The "benefit amount" is your retirement benefit as of July 1, 1998, or as of the date of your survivor's death, whichever is later.

The "administrative factor" is the rate that was used to calculate your reduced benefit for the continuing survivor option. If you retired prior to January 1, 1996, the administrative factor is the rate that was in effect on July 1, 1998, and is available for reference on the DRS website.

(b) If you are a PERS Plan 1 member receiving "state-funded long-term care services" as defined in RCW 41.40.-189, you are not eligible for the increase described in this subsection if it would make you ineligible for the state-funded long-term care services. You must notify DRS to waive the increase if this applies to you.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-103-215 What are the WSPRS Plan 1 retirement benefit options? This section only applies to members commissioned before January 1, 2003.

(1) When retiring for service, a married member can choose either Option A (historic retirement option) under RCW 43.43.260 and 43.43.270 or Option B under RCW 43.43.-278. Both options include a survivor (~~(feature)~~) option that entitles the eligible surviving spouse and any eligible children to receive a monthly benefit after the retiree dies.

(2) **Option A (historic retirement option and survivor benefit).** The department pays the retiree a monthly retirement benefit in accordance with RCW 43.43.260 (Benefits). The department pays survivor benefits in accordance with RCW 43.43.270 (Retirement allowances).

(a) **Surviving spouse.** When the retiree dies, the department pays the retiree's surviving spouse a monthly retirement benefit equal to the gross monthly benefit then payable to the retiree, or a benefit equal to fifty percent of the average final salary (AFS) used to determine the retiree's benefit, whichever is less.

(b) **Surviving children when there is a surviving spouse.** If the retiree has a surviving spouse and surviving unmarried children under the age of eighteen years, each child shall be entitled to a benefit equal to five percent of the

retiree's average final salary (AFS) at retirement. The combined benefits to the surviving spouse and all children cannot exceed sixty percent of the retiree's AFS.

(3) **Option B (actuarially equivalent retirement option and survivor benefit).** The department pays the retiree a monthly retirement benefit that is actuarially reduced from the benefit calculated under Option A. The department pays survivor benefits in accordance with RCW 43.43.278 using an actuarial reduction. See WAC 415-02-380 for more information on how your benefit is affected by choosing an optional survivor ~~((feature))~~ option.

(a) **Surviving spouse.** When the retiree dies, the department pays the retiree's surviving spouse a monthly retirement benefit equal to the gross monthly benefit then payable to the retiree.

(b) **Surviving children when there is a surviving spouse.** If the retiree has a surviving spouse and surviving unmarried children under the age of eighteen years, each surviving unmarried child under the age of eighteen years shall be entitled to a benefit equal to five percent of the retiree's average final salary (AFS) at retirement.

(4) **Benefits included in Option A and Option B.**

(a) **Cost-of-living adjustment.** The retiree's annual adjustment every July is based upon the provisions in RCW 43.43.260(5). The annual adjustment applies to the eligible surviving spouse and any eligible children, who receive a monthly benefit after the retiree dies.

(b) **Surviving spouse eligibility.** To be eligible for a benefit, the surviving spouse of a retiree must either:

(i) Have been married to the retiree prior to his or her retirement and continuously thereafter until the retiree's death; or

(ii) Have been married to the retiree for at least two years prior to the retiree's death.

(c) **Remarriage of surviving spouse.** If a surviving spouse who is receiving benefits under this subsection marries another member of WSPRS and that retiree dies before the spouse, the spouse will receive only the higher of the two survivors' benefits for which he or she qualifies. The surviving spouse cannot receive more than one survivor benefit at a time under this subsection.

(d) **Surviving children when there is no surviving spouse.** If there is no surviving spouse or the surviving spouse dies, the unmarried child or children under the age of eighteen years shall be entitled to a benefit equal to thirty percent of the retiree's AFS for one child and an additional ten percent of AFS for each additional child. The combined benefits to the surviving children cannot exceed sixty percent of the retiree's AFS. Benefit payments under this subsection will be divided equally among the children.

(e) **End of benefits.** All benefits end when the surviving spouse dies or the youngest unmarried child reaches age eighteen, whichever occurs last.

(f) **Distribution of remaining contributions.** Any remaining balance of the retiree's accumulated contributions will be paid to:

(i) The person(s), trust, organization, or retiree's estate specified by the retiree on the appropriate department designated form, duly executed and properly on file with the department on or before the retiree's death; or

(ii) To the retiree's legal representative, if no person or entity designated in (f)(i) of this subsection is living or in existence at the time of the retiree's death.

(5) **Pop-up provision.**

(a) This subsection only applies to members retiring on or after July 1, 2000, who select Option B.

(b) If the retiree and spouse divorce, or if the spouse dies before the retiree, the ~~((retiree's monthly retirement benefit increases, effective the first day of the following month, to:~~

~~(i) The amount that the retiree would have received had the retiree chosen Option A at retirement; plus~~

~~(ii) Any cost-of-living adjustments (COLA) the retiree received prior to the divorce or the spouse's death;~~

~~(e) Pop-up recalculation example:~~

~~Option B: When Bob retired in September 2010, his Option A monthly benefit was \$3,000. He selected Option B so that his spouse, Linda, would receive his monthly benefit and COLA after he dies. Bob is 5 years younger than Linda. For illustration purposes in this example, 0.967 is being used as the Option B actuarial reduction factor (actuarial factors change periodically). As a result, the department calculated Bob's Option B benefit amount by multiplying \$3,000 (Option A) by 0.967. Bob's Option B monthly benefit amount at retirement was \$2,901. Bob received his first COLA on July 1, 2012, in the amount of \$87.03. Bob's monthly benefit amount with the COLA was \$2,988.03.~~

~~Linda died in September 2012. Under the "pop-up" provision, Bob's monthly benefit increased in October 2012 to a total of \$3,087.03. His new benefit amount included the \$3,000 he would have received had he originally chosen Option A, plus the COLA he received in 2012 (\$87.03).~~

~~(d) If a retiree whose benefit increases under this subsection dies and there is no eligible child, all benefit payments end. Any remaining balance of the retiree's accumulated contributions will be paid to:~~

~~(i) The person(s), trust, organization, or retiree's estate specified by the retiree on the appropriate department designated form, duly executed and properly on file with the department on or before the retiree's death; or~~

~~(ii) To the retiree's legal representative, if no person or entity designated in (d)(i) of this subsection is living or in existence at the time of the retiree's death.~~

~~(6) See chapter 415-02 WAC starting with WAC 415-02-300 for information on how the department uses factors and schedules to calculate retirement benefits.~~

~~(7) Terms used in this section:~~

~~"Pop-up" — See WAC 415-02-030)) retiree may request to have their benefit increased as described in WAC 415-02-380 (6)(a)(i).~~

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-103-225 What are my WSPRS Plan 2 retirement benefit options? This section applies to WSPRS Plan 2 members. Upon retirement for service under RCW 43.43.250, you must choose to have your monthly retirement ~~((allowance))~~ benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section include a survivor option. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly benefit for the duration of his or her life. Your monthly retirement benefit will be actuarially reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit is affected by choosing a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (~~no survivor~~) nonsurvivor option.** The department will pay you a monthly retirement benefit throughout your life. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly benefit equal to ~~((the))~~ your gross monthly ~~((retirement allowance you were receiving))~~ benefit.

(c) **Option three: Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly benefit equal to ~~((one half of the))~~ fifty percent of your gross monthly ~~((retirement allowance you were receiving))~~ benefit.

(d) **Option four: Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667 percent) of ~~((the))~~ your gross monthly ~~((retirement allowance you were receiving))~~ benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must submit your spouse's notarized ((signature indicating)) consent ((to the retirement option you select)). If you do not provide spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and ~~((one half allowance))~~ and record) fifty percent benefit with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the

department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** ~~((Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death. Your increased monthly allowance will be:~~

(a) ~~The amount you would have received had you chosen the standard allowance option at the time of retirement; plus~~

(b) ~~Any cost of living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.~~

Example:

~~John retired from WSPRS in 2008. John chose a benefit option with a survivor feature and named Beatrice, his daughter, as his survivor beneficiary. As a result, John's monthly allowance was reduced from \$2,000 (standard allowance) to \$1,750. Beatrice died in 2013. John's monthly allowance will increase to \$2,191.05, which equals the amount he would have received had he chosen the standard allowance option, plus the COLAs he has received (based on his prior monthly allowance).~~

Year	Standard- Allowance	Survivor- Option plus COLAs	COLA-incr. (3% max)	\$ Increase
2008	2,000.00	1,750.00		0.00
2009		1,750.00	.02	35.00
2010		1,785.00	.03	53.55
2011		1,838.55	.025	45.96
2012		1,884.51	.03	56.54
2013	2,000.00	1,941.05	—	—
Total COLAs				191.05
Original Monthly- Allowance	\$2000	+ Total COLAs		= New Monthly Allowance
		+\$191.05		= \$2,191.05*

* In the future, John's COLA will be based on his increased monthly allowance.)

If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard ~~((allowance))~~ benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor ~~((feature))~~ option and name your current spouse as survivor, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor ~~((feature))~~ option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ~~((allowance))~~ benefit. You may exercise this option one time only.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ~~((allowance))~~ benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ~~((allowance))~~ benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 43.43.271.

AMENDATORY SECTION (Amending WSR 17-02-033, filed 12/28/16, effective 1/28/17)

WAC 415-104-202 ~~((Survivor benefit options — LEOFF Plan 1-))~~ **What are my LEOFF Plan 1 retirement benefit options?** (1) ~~((To whom does this section apply?~~

This section applies to you if you are a retiree of LEOFF Plan 1.

~~((2))~~ **What are flexible survivor benefit options?** RCW 41.26.164 allows a retiree to provide a survivor option for a spouse who is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161. The survivor option will provide a lifetime benefit for the spouse after the retiree's death.

~~((3))~~ **(2) How will my monthly retirement benefit be affected by selecting a flexible survivor option?** Your monthly retirement benefit will be actuarially reduced beginning the first month following the month in which the department receives the completed form.

~~((4))~~ **(3) What are the flexible survivor option choices?**

(a) **Joint and ~~((whole))~~ one hundred percent survivor benefit ~~((option))~~.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, the department will pay your surviving spouse a monthly benefit equal to the gross monthly retirement benefit you were receiving.

(b) **Joint and ~~((one-half))~~ fifty percent survivor benefit ~~((option))~~.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your surviving spouse will receive a gross monthly benefit equal to ~~((one-half of the))~~ fifty percent of your gross monthly ~~((retirement))~~ benefit ~~((you were receiving))~~.

(c) **Joint and two-thirds survivor benefit ~~((option))~~.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your surviving spouse will receive a gross monthly benefit equal to two-thirds (66.667%) of ~~((the))~~ your gross monthly ~~((retirement))~~ benefit ~~((you were receiving))~~.

~~((5))~~ **(4) Do I qualify to add a flexible survivor option?** You may select a flexible survivor option if:

(a) Your current spouse is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161;

(b) Some portion of your monthly retirement benefit is payable to you, after any reduction pursuant to a property division obligation under RCW 41.50.670; and

(c) You meet the deadline and application requirements in subsection ~~((6))~~ **(5)** of this section.

~~((6))~~ **(5) How do I add a flexible survivor option?** You may select a flexible survivor option and name your current spouse as your survivor beneficiary, provided that:

(a) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of the marriage, or as otherwise authorized by law;

(b) You provide a copy of your certified marriage certificate to the department;

(c) You provide proof, satisfactory to the department, of your current spouse's birth date; and

(d) You file the properly completed forms with the department in a timely manner.

~~((7))~~ **(6) May I remove the flexible survivor option in the future?** ~~((Your choice of a))~~ You may remove your flexible survivor option ~~((is irrevocable with the following exceptions))~~ under the following circumstances:

(a) Your spouse dies before you ~~((or))~~. Your benefit may be increased as described in WAC 415-02-380 (6)(a)(ii).

(b) You and your spouse divorce.

~~((See subsection (8) of this section.~~

~~(8) **What happens if my spouse dies before me, or if we divorce?** If your spouse dies before you, or if you divorce, your monthly retirement benefit will increase, effective the first day of the following month. Your increased monthly benefit will be) If you choose to remove your former spouse as your survivor, your benefit will increase to the amount you would have received had you not chosen a flexible survivor option plus any cost-of-living adjustments (COLA) you received prior to ~~((your spouse's death))~~ removing your survivor.~~

~~((9)) (7) **What happens to my eligible surviving children's share if I select a flexible survivor option?** There is *no* impact to the benefit provided under RCW 41.26.160 or 41.26.161 to surviving children if you select a flexible survivor option.~~

~~((10)) (8) **Actuarial information.** See chapter 415-02 WAC starting with WAC 415-02-300 for information on how the department uses actuarial factors and schedules to calculate retirement benefits.~~

(9) Terms used in this section:

(a) Child or children - RCW 41.26.030(7).

(b) Eligible surviving child - RCW 41.26.160 and 41.26.161.

(c) Eligible surviving spouse - RCW 41.26.161 and 41.26.162.

(d) Surviving spouse - RCW 41.26.030(6).

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-104-215 What are my LEOFF Plan 2 retirement benefit options ~~((—LEOFF Plan 2))~~? If you retire for service under RCW 41.26.430 or nonduty disability under RCW 41.26.470, or if you choose to receive a monthly ~~((allowance))~~ benefit for duty disability under RCW 41.26.470, you must choose to have your monthly retirement ~~((allowance))~~ benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly ~~((allowance))~~ benefit after my death?** Options described in subsection (2)(b) through (d) of this section ~~((include a survivor feature))~~ will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ~~((allowance))~~ benefit after your death is referred to as your "survivor beneficiary." ~~((Upon))~~ After your death, your survivor beneficiary will ~~((be entitled to))~~ receive a monthly ~~((allowance))~~ benefit for the duration of ~~((his or her))~~ their life. Your monthly retirement ~~((allowance))~~ benefit will be ~~((actuarially))~~ reduced to offset the cost of the survivor ~~((feature))~~ option. See WAC 415-02-380 for more information on how your monthly ~~((allowance is))~~ benefit will be affected ~~((by choosing))~~ if you choose a survivor ~~((feature))~~ option.

(2) **What are my benefit options?**

(a) **Option one: Standard ~~((allowance (no survivor feature))~~ benefit (nonsurvivor option).** The department will

pay you a monthly retirement ~~((allowance))~~ benefit throughout your lifetime. Your monthly ~~((allowance))~~ benefit will cease upon your death.

(b) **Option two: Joint and ~~((whole allowance))~~ one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ~~((allowance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly ~~((allowance))~~ benefit equal to ~~((the))~~ your gross monthly ~~((retirement allowance you were receiving))~~ benefit.

(c) **Option three: Joint and ~~((one-half allowance))~~ fifty percent survivor benefit.** The department will pay you a reduced monthly retirement ~~((allowance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly ~~((allowance))~~ benefit equal to ~~((one-half of the))~~ fifty percent of your gross monthly ~~((retirement allowance you were receiving))~~ benefit.

(d) **Option four: Joint and two-thirds ~~((allowance))~~ benefit.** The department will pay you a reduced monthly retirement ~~((allowance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly ~~((allowance))~~ benefit equal to two-thirds (66.667%) of ~~((the))~~ your gross monthly ~~((retirement allowance you were receiving))~~ benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's notarized ~~((signature indicating))~~ consent ~~((to the retirement option you select)).~~ If you do not provide spousal consent, the department will pay you a monthly retirement ~~((allowance))~~ benefit based on option three (joint and ~~((one-half allowance) and record))~~ fifty percent benefit with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor ~~((feature))~~ option and my survivor beneficiary dies before I do?** ~~((Your monthly retirement allowance will~~

increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death.

~~(a) Members who retire on or after January 1, 1996. Your increased monthly allowance will be:~~

~~(i) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus~~

~~(ii) Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death based on your original option selection.~~

Example:

Agnes retires in 1996. She chooses a benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes's monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Beatrice dies in January 2001. Agnes's monthly allowance will increase to \$2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).

Year	Standard- Allowance	Survivor- Option plus COLAs	COLA iner- (3% max)	\$ Increase
1996	2,000.00	1,750.00		0.00
1997		1,750.00	.02	35.00
1998		1,785.00	.03	53.55
1999		1,838.55	.025	45.96
2000		1,884.51	.03	56.54
2001	2,000.00	1,941.05	—	—
			Total COLAs	191.05
Original Option One- Monthly Allowance	+ Total COLAs		= New Monthly Allowance	
\$2000	+\$191.05		=\$2,191.05*	

* In the future, Agnes's COLA will be based on her increased monthly allowance.

~~(b) Members who retired before January 1, 1996. Your monthly retirement allowance will be adjusted according to the provisions of RCW 41.26.460(3).) If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.~~

(6) May I change my benefit option after retirement? Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard ((allowance)) benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor ((feature)) option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(ii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor ((feature)) option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ((allowance)) benefit. You may exercise this option one time only.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ((allowance)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ((allowance)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 41.26.460.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-104-211 Married LEOFF Plan 2 member's benefit selection—Spousal consent required.

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-500 PSERS disability benefits. This section covers disability benefits provided for in RCW 41.37.230. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on-the-job or off-the-job injuries and/or illnesses.

Members may also be eligible for benefits from the Washington state departments of labor and industries (work-

ers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for disability benefits if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other PSERS position for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as a monthly disability allowance?**

(a) If you have at least ten years of service credit in PSERS, you will receive a monthly allowance equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age **sixty**. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

(b) If you have less than ten years of service credit, you will receive a monthly allowance¹ equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age **sixty-five**. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

¹*You may choose to receive a lump sum payment instead of a monthly allowance if your initial monthly allowance will be less than fifty dollars. See RCW 41.37.200.*

See WAC 415-02-320 for early retirement factors and examples.

(3) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1: Disability retirement application.** (~~You must complete and sign the application.~~) If you are married, your (~~spouse must sign consent to the benefit option you select. You, and your spouse if you are married, must have your signatures notarized.~~) spouse's consent may be required as described in WAC 415-106-600.

(ii) **Part 2:** Employer's statement and report. Your employer must complete and sign Part 2, and return it directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return it directly to the department. You are responsible for all medical expenses related to your application for benefits. A copy of your job description must be provided to the physician at time of examination.

(b) When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(4) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(5) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, you should request a benefit estimate from the department, as there may be a difference in the dollar amount of your monthly allowance.

(6) **Once my application is approved, when will my monthly allowance begin?**

(a) Your disability allowance will accrue from the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from PSERS employment.

(i) If you are continuing to perform the duties of your position or another PSERS position, you may reapply for disability benefits according to subsection (3) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(7) **What are my options if my application is denied?**

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a PSERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(8) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(9) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.37.090(3) or contact the department.

(10) **Am I eligible for disability benefits if my disability is the result of my criminal conduct?** No. See RCW 41.37.100.

(11) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law. See chapters 41.54 RCW and 415-113 WAC. You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(12) **How long will I continue to receive a monthly disability allowance?** You may receive a monthly allowance throughout your lifetime, subject to the provisions of subsection (13) of this section.

(13) **Is it possible to lose my monthly disability allowance after I begin receiving it?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive a disability allowance if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.37.010(4), at a comparable compensation.

(b) If you return to employment and reenter PSERS membership, your benefits will cease.

(14) **If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes, you may restore your service credit if you take a lump sum benefit and return to PSERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165 and 41.37.200.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-106-600 What are my retirement benefit options? Upon retirement for service under RCW 41.37.210 or retirement for disability under RCW 41.37.230, you must choose to have your retirement ((allowance)) benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly ((allowance)) benefit after my death?** Options described in subsection (2)(b) through (d) of this section ((include a survivor feature)) will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ((allowance)) benefit after your death is referred to as your "survivor beneficiary." ((Upon)) After your death, your survivor beneficiary will ((be entitled to))

receive a monthly ((allowance)) benefit for the duration of ((his or her)) their life. Your monthly retirement ((allowance)) benefit will be ((actuarially)) reduced to offset the cost of the survivor ((feature)) option. See WAC 415-02-380 for more information on how your monthly ((allowance-is)) benefit will be affected ((by choosing)) if you choose a survivor ((feature)) option.

(2) **What are my benefit options?**

(a) **Option one: Standard ((allowance (no survivor feature)) benefit (nonsurvivor option)).** The department will pay you a monthly retirement ((allowance)) benefit throughout your lifetime. Your monthly ((retirement allowance)) benefit will cease upon your death.

(b) **Option two: Joint and ((whole allowance)) one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ((allowance)) benefit throughout your lifetime. After your death, ((the department will pay)) your survivor beneficiary ((a monthly allowance)) will receive a gross monthly benefit equal to ((the)) your gross monthly ((retirement allowance you were receiving)) benefit.

(c) **Option three: Joint and ((one-half allowance)) fifty percent survivor benefit.** The department will pay you a reduced monthly retirement ((allowance)) benefit throughout your lifetime. After your death, ((the department will pay)) your survivor beneficiary ((a)) will receive a gross monthly ((allowance)) benefit equal to ((one-half of the)) fifty percent of your gross monthly ((retirement allowance you were receiving)) benefit.

(d) **Option four: Joint and two-thirds ((allowance)) survivor benefit.** The department will pay you a reduced monthly retirement ((allowance)) benefit throughout your lifetime. After your death, ((the department will pay)) your survivor beneficiary will receive a gross monthly ((allowance)) benefit equal to two-thirds (66.667%) of ((the gross monthly retirement allowance you were receiving)) your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's notarized ((signature indicating)) consent ((to the retirement option you select)). If you do not provide spousal consent, the department will pay you a monthly retirement ((allowance)) benefit based on option three (joint and ((one-half allowance) and record)) fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit (option) with a survivor (feature) option and my survivor beneficiary dies before I do?** ~~(Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will accrue from the first day of the month following the death. Your increased monthly allowance will be:~~

~~(a) The amount you would have received had you chosen the standard allowance option at the time of retirement, plus~~

~~(b) Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.~~

Example: John retires from PSERS in 2006. John chooses a benefit option with a survivor feature and names Beatrice, his daughter, as his survivor beneficiary. As a result, John's monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Beatrice dies in 2011. John's monthly allowance will increase to \$2,191.05, which equals the amount he would have received had he chosen the standard allowance option, plus the COLAs he has received (based on his prior monthly allowance).

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	\$ Increase
2006	2,000.00	1,750.00		0.00
2007		1,750.00	.02	35.00
2008		1,785.00	.03	53.55
2009		1,838.55	.025	45.96
2010		1,884.51	.03	56.54
2011	2,000.00	1,941.05	—	—
			Total COLAs	191.05
Original Option One Monthly Allowance \$2000		+ Total COLAs		= New Monthly Allowance = \$2,191.05

If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service,

you may choose a different retirement option upon your subsequent retirement. See RCW 41.37.050(3).

(b) **Postretirement marriage option.** If you select the standard ~~((allowance))~~ benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option ~~((with a survivor feature))~~ and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option ~~((with a survivor feature))~~ and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ~~((allowance))~~ benefit. You may exercise this option one time only.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ~~((allowance))~~ benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ~~((allowance))~~ benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate. See RCW 41.37.170.

AMENDATORY SECTION (Amending WSR 16-21-059, filed 10/14/16, effective 11/14/16)

WAC 415-106-610 How do I apply for retirement benefits? You should apply for retirement benefits at least thirty days before your intended retirement date. You can apply online at the department's website or by submitting to the department:

(1) A completed, signed and notarized retirement application, including:

(a) Your selection of one of the benefit options described in WAC 415-106-600.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's ~~((notarized signature indicating consent to the retirement option you selected.~~

~~(i) If you are married and you do not provide spousal consent, the department will pay you a monthly retirement allowance based on WAC 415-106-600 (2)(c), option three (joint and one-half survivor benefit allowance) and record your spouse as the survivor beneficiary as required by RCW 41.37.170 (2)(a).~~

~~(ii) Spousal consent is not required if a dissolution decree designating your survivor beneficiary under RCW 41.50.790 was filed with the department at least thirty days prior to your retirement date)) consent may be required as described in WAC 415-106-600.~~

(2) Evidence of your birth date, only if requested by the department, such as a photocopy of your birth certificate, passport or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department. If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-108-326 What are my retirement benefit options? Upon retirement for service under RCW 41.40.180, 41.40.630, or 41.40.820, or for disability under RCW 41.40.210, 41.40.230, 41.40.670, or 41.40.825, you must choose to have the defined benefit portion of your retirement ~~((allow-
ance))~~ benefit paid to you by one of the options described in this section. If you are a Plan 1 member, you may also select an optional supplemental cost of living adjustment (COLA).

(1) **Which option will pay my beneficiary a monthly ~~((allow-
ance))~~ benefit after my death?** Options described in subsection (2)(b) through (d) of this section ~~((include a survi-
vor feature))~~ will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ~~((allow-
ance))~~ benefit after your death is referred to as your "survivor beneficiary." ~~((Upon))~~ After your death, your survivor beneficiary will ((be entitled to)) receive a monthly ~~((allow-
ance))~~ benefit for the duration of ~~((his or her))~~ their life. Your monthly retirement ~~((allow-
ance))~~ benefit will be ~~((actuarially))~~ reduced to offset the cost of the survivor ~~((feature))~~ option. See WAC 415-02-380 for more information on how your monthly ~~((allow-
ance is affected by choosing))~~ benefit will be affected if you choose a survivor ~~((feature))~~ option.

(2) **What are my benefit options?**

(a) **Option one: Standard ~~((allow-
ance (no survivor feature)))~~ benefit (nonsurvivor option).** The department will pay you a monthly retirement ~~((allow-
ance))~~ benefit throughout your lifetime. Your monthly ~~((allow-
ance))~~ benefit will cease upon your death.

(b) **Option two: Joint and ~~((whole allowance))~~ one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ~~((allow-
ance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly ((allow-
ance)) benefit equal to ((the gross monthly retirement allowance you were receiving)) your gross monthly benefit.

(c) **Option three: Joint and ~~((one-half allowance))~~ fifty percent survivor benefit.** The department will pay you a reduced monthly retirement ~~((allow-
ance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly ((allow-
ance)) benefit equal to ((one-half of the gross monthly retirement allowance you were receiving)) fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds ~~((allow-
ance (available to members retiring on or after January 1, 1996-
))~~ survivor benefit.¹** The department will pay you a reduced monthly retirement ~~((allow-
ance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly ((allow-
ance)) benefit equal to two-thirds (66.667%) of ((the gross monthly retirement allowance you were receiving)) your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spou-
sal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's notarized ~~((signature indicating))~~ consent ((to the retirement option you select)). If you do not provide spousal consent, the department will pay you a monthly retirement ~~((allow-
ance))~~ benefit based on option three (joint and ~~((one-half allowance) and record))~~ fifty percent benefit) with your spouse as the survivor benefi-
ciary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The depart-
ment will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be desig-

nated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) What is the supplemental COLA option for Plan 1 members? If you are a Plan 1 member, in addition to choosing a retirement benefit option described in subsection (2) of this section, you may choose to receive a supplemental annual COLA. If you select this option, your monthly retirement ((allowance)) benefit will be actuarially reduced to offset the cost of this benefit.

(6) What happens if I choose a benefit ((option)) with a survivor ((feature)) option and my survivor beneficiary dies before I do? ((Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death.

(a) Members who retired on or after January 1, 1996. Your increased benefit will be:

- (i) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus
- (ii) Any COLAs you received prior to your survivor beneficiary's death, based on your original option selection.

Example:

Agnes retires from PERS Plan 2 in 1996. She chooses a benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes's monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Beatrice dies in 2001. Agnes's monthly allowance will increase to \$2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).

Year	Standard- Allowance	Survivor- Option plus COLAs	COLA iner. (3% max)	\$ Increase
1996	2,000.00	1,750.00		0.00
1997		1,750.00	.02	35.00
1998		1,785.00	.03	53.55
1999		1,838.55	.025	45.96
2000		1,884.51	.03	56.54
2001	2,000.00	1,941.05	—	—
			Total COLAs	191.05
Original Monthly Allowance		+ Total COLAs		= New Monthly Allowance
\$2000		+\$191.05		=\$2,191.05*

* In the future, Agnes's COLA will be based on her increased monthly allowance.

(b) Members who retire before January 1, 1996. Your monthly retirement allowance will be adjusted according to the provisions of RCW 41.40.188(3) (Plan 1) or RCW 41.40.660(3) (Plan 2).) If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(7) May I change my benefit option after retirement? Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.40.037.

(b) **Postretirement marriage option.** If you select the standard ((allowance)) benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option ((with a survivor feature)) and name your current spouse as survivor beneficiary, provided that:

- (i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;
- (ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;
- (iii) You provide a copy of your certified marriage certificate to the department; and
- (iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option ((with a survivor feature)) and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ((allowance)) benefit. You may exercise this option one time only.

(8) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) Plan 1 and 2 members:

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ((allowance)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ((allowance)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) Plan 3 members: The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement ((allowance)) benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(9) For more information, see RCW 41.40.188 (Plan 1), RCW 41.40.660 (Plan 2) and RCW 41.40.845 (Plan 3).

¹ Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-108-436 PERS Plans 2 and 3 disability benefits. This section covers disability benefits provided for in RCW 41.40.670 and 41.40.825 for members of PERS Plans 2 and 3. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on- or off-the-job injuries and/or illnesses.

Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for a disability allowance if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other position for a PERS employer for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as my monthly disability benefits under the standard option?**

(a) If you are a Plan 2 member, you will receive two percent times average final compensation (AFC) times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(b) If you are a Plan 3 member, you will receive a defined benefit of one percent times average final compensation times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(c) The degree of your disability or impairment will not impact the amount of your disability benefit.

(3) **May I choose a benefit option that provides a monthly allowance to my survivor beneficiary?** You may choose to have your benefit paid according to any of the benefit options described in WAC 415-108-326. If you choose an option with a survivor (~~feature~~) benefit, your monthly benefit will be (~~actuarially~~) reduced to offset the cost of the survivor option.

(4) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. You must complete(~~;~~) and sign (~~and have notarized~~) the application.

If you are married, your (~~spouse must sign consent of the benefit option you choose~~) spouse's consent may be required as described in WAC 415-108-326.

(ii) **Part 2:** Employer's statement and report. Your employer must complete, sign and return directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return directly to the department. You are responsible for all medical expenses related to your application for benefits.

(b) When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(5) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(6) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, there will be no difference in the dollar amount of your benefit.

(7) **Once my application is approved, when will my benefit begin?**

(a) You will start accruing disability benefits the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first benefit payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from PERS employment.

(i) If you are continuing to perform the duties of your position or another PERS position, you may reapply for disability benefits according to subsection (4) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(8) **What are my options if my application is denied?**

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a PERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(9) **What information must be provided to the department if I am receiving disability benefits?**

(a) You and your doctor must report any improvement in your condition; and

(b) You must report the name of your employer and monthly salary if you resume employment, regardless of the number of hours you work.

(10) **How long will my disability benefits last?** You may receive benefits throughout your lifetime, subject to the provisions of subsection (15) of this section.

(11) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(12) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.40.052(3) or contact the department.

(13) **Am I eligible for disability benefits if my disability is the result of my criminal conduct committed after April 21, 1997?** No. For more information, see RCW 41.40-054.

(14) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law (see chapters 41.54 RCW and 415-113 WAC). You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(15) **Is it possible to lose my disability benefits after I begin receiving them?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive disability benefits if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.40.010 (4)(b), at a comparable compensation.

(b) If you return to employment and reenter PERS membership, your benefits will cease.

(16) **If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes, you may restore your service credit if you take a lump sum benefit and return to PERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165.

(c) The provisions for restoring service credit vary according to retirement plan.

(i) If you are a member of PERS Plan 2, see RCW 41.40.625.

(ii) If you are a member of PERS Plan 3, see RCW 41.40.815.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-108-324 I am married—Do I need my spouse's consent on the retirement option I choose?

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-110-436 SERS Plans 2 and 3 disability benefits. This section covers disability benefits provided for in RCW 41.35.440 and 41.35.690 for members of SERS Plans 2 and 3. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on- or off-the-job injuries and/or illnesses. Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for a disability allowance if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other position for a SERS employer for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as my monthly disability benefits under the standard option?**

(a) If you are a Plan 2 member, you will receive two percent times average final compensation (AFC) times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(b) If you are a Plan 3 member, you will receive a defined benefit of one percent times average final compensation times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(c) The degree of your disability or impairment will not impact the amount of your disability benefit.

(3) **May I choose a benefit option that provides a monthly allowance to my survivor beneficiary?** You may choose to have your benefit paid according to any of the benefit options described in WAC 415-110-326. If you choose an option with a survivor ~~((feature))~~ benefit, your monthly benefit will be ~~((actuarially))~~ reduced to offset the cost of the survivor option.

(4) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. You must complete ~~((;))~~ and sign ((and have notarized)) the application. If you are married, your ~~((spouse must sign))~~ spouse's consent ((of the benefit option you choose)) may be required as described in WAC 415-110-610.

(ii) **Part 2:** Employer's statement and report. Your employer must complete, sign and return directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return directly to the department. You are responsible for all medical expenses related to your application for benefits.

(b) When the department receives part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(5) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(6) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, there will be no difference in the dollar amount of your benefit.

(7) **Once my application is approved, when will my benefit begin?**

(a) You will start accruing disability benefits the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first benefit payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from SERS employment.

(i) If you are continuing to perform the duties of your position or another SERS position, you may reapply for disability benefits according to subsection (4) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(8) **What are my options if my application is denied?**

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a SERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(9) **What information must be provided to the department if I am receiving disability benefits?**

(a) You and your doctor must report any improvement in your condition; and

(b) You must report the name of your employer and monthly salary if you resume employment, regardless of the number of hours you work.

(10) **How long will my disability benefits last?** You may receive benefits throughout your lifetime, subject to the provisions of subsection (15) of this section.

(11) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(12) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.35.100(3) or contact the department.

(13) **Am I eligible for disability benefits if my disability is the result of my criminal conduct committed after April 21, 1997?** No. For more information, see RCW 41.35-110.

(14) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law (see chapters 41.54 RCW and 415-113 WAC). You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(15) **Is it possible to lose my disability benefits after I begin receiving them?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive disability benefits if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.35.010(4), at a comparable compensation.

(b) If you return to employment and reenter SERS membership, your benefits will cease.

(16) If I take my disability benefit in a lump sum and return to work, may I restore my service credit? Yes, you may restore your service credit if you take a lump sum benefit and return to SERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165.

(c) The provisions for restoring service credit vary according to retirement plan.

(i) If you are a member of SERS Plan 2, see RCW 41.35.410.

(ii) If you are a member of SERS Plan 3, see RCW 41.35.670.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-110-610 What are my retirement benefit options? Upon retirement for service under RCW 41.35.420 or 41.35.680, or for disability under RCW 41.35.440 or 41.35.690, you must choose to have the defined benefit portion of your retirement ~~((allowance))~~ benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly ~~((allowance))~~ benefit after my death?** Options described in subsection (2)(b) through (d) of this section ~~((include a survivor feature))~~ will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ~~((allowance))~~ benefit after your death is referred to as your "survivor beneficiary." ~~((Upon))~~ After your death, your survivor beneficiary will ~~((be entitled to))~~ receive a monthly ~~((allowance))~~ benefit for the duration of ~~((his or her))~~ their life. Your monthly retirement ~~((allowance))~~ benefit will be ~~((actuarially))~~ reduced to offset the cost of the survivor ~~((feature))~~ option. See WAC 415-02-380 for more information on how your monthly ~~((allowance is))~~ benefit will be affected ~~((by choosing))~~ if you choose a survivor ~~((feature))~~ option.

(2) **What are my benefit options?**

(a) **Option one: Standard ~~((allowance (no survivor feature))~~ benefit (nonsurvivor option).** The department will pay you a monthly retirement ~~((allowance))~~ benefit throughout your lifetime. Your monthly ~~((retirement allowance))~~ benefit will cease upon your death.

(b) **Option two: Joint and ~~((whole allowance))~~ one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ~~((allowance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly ~~((allowance))~~ benefit equal to ~~((the gross monthly~~

retirement allowance you were receiving)) your gross monthly benefit.

(c) **Option three: Joint and ~~((one-half allowance))~~ fifty percent survivor benefit.** The department will pay you a reduced monthly retirement ~~((allowance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly ~~((allowance))~~ benefit equal to ~~((one-half of the))~~ fifty percent of your gross monthly ~~((retirement allowance you were receiving))~~ benefit.

(d) **Option four: Joint and two-thirds ~~((allowance))~~ survivor benefit.** The department will pay you a reduced monthly retirement ~~((allowance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly ~~((allowance))~~ benefit equal to two-thirds (66.667%) of ~~((the))~~ your gross monthly ~~((retirement allowance you were receiving))~~ benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's notarized ~~((signature indicating))~~ consent ~~((to the retirement option you select)).~~ If you do not provide spousal consent, the department will pay you a monthly retirement ~~((allowance))~~ benefit based on option three (joint and ~~((one-half allowance))~~ and record) fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor ~~((feature))~~ option and my survivor beneficiary dies before I do?** ~~((Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death. Your increased monthly allowance will be:~~

(a) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus

(b) ~~Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.~~

Example:

Agnes retires from SERS Plan 2 in 2006. Agnes chooses a ~~benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes's monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Beatrice dies in 2011. Agnes's monthly allowance will increase to \$2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).~~

Year	Standard- Allowance	Survivor- Option plus COLAs	COLA iner. (3% max)	\$ Increase
2006	2,000.00	1,750.00		0.00
2007		1,750.00	.02	35.00
2008		1,785.00	.03	53.55
2009		1,838.55	.025	45.96
2010		1,884.51	.03	56.54
2011	2,000.00	1,941.05	—	—
			Total COLAs	191.05

Original Option One- Monthly Allowance	+ Total COLAs	= New Monthly Allowance
\$2000	+\$191.05	=\$2,191.05*

* In the future, Agnes's COLAs will be based on her increased monthly allowance.)

If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) May I change my benefit option after retirement?

Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.35.060.

(b) **Postretirement marriage option.** If you select the standard ((allowance)) benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option ((with a survivor feature)) and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-01-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option ((with a survivor feature)) and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation

and have your benefit adjusted to a standard ((allowance)) benefit. You may exercise this option one time only.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) Plan 2 members:

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ((allowance)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ((allowance)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement ((allowance)) benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.35.220.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-110-324 Married member's benefit selection—
Spousal consent required.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-112-504 What are ((the)) my TRS Plan 1 retirement benefit options ((for Plan 1 members))? Upon retirement from Plan 1 for service under RCW 41.32.480 or disability under RCW 41.32.550 (1)(c), you must choose to have your retirement ((allowance)) benefit paid to you by one of the options described in this section. You may also select an optional supplemental cost-of-living (COLA) adjustment.

(1) May I withdraw any of my contributions? You may withdraw some or all of your accumulated contributions as follows:

(a) If you retire according to the provisions of RCW 41.32.498, you may withdraw some or all of your accumulated contributions at the time of retirement. Your monthly retirement ~~((allowance))~~ benefit will be ~~((actuarially))~~ reduced according to the amount you withdraw.

(b) If you terminate service due to a disability under the conditions of RCW 41.32.550 (1)(a), you may withdraw all your accumulated contributions in a lump sum payment. You will receive no monthly retirement ~~((allowance))~~ benefit.

(2) **Which option will pay my beneficiary a monthly ~~((allowance))~~ benefit after my death?** Options described in subsection (3)(c) through (e) of this section ~~((include a survivor feature))~~ will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ~~((allowance))~~ benefit after your death is referred to as your "survivor beneficiary." ~~((Upon))~~ After your death, your survivor beneficiary will ~~((be entitled to))~~ receive a monthly ~~((allowance))~~ benefit for the duration of ~~((his or her))~~ their life. Your monthly retirement ~~((allowance))~~ benefit will be ~~((actuarially))~~ reduced to offset the cost of the survivor ~~((feature))~~ option. See WAC 415-02-380 for more information on how your monthly ~~((allowance is))~~ benefit will be affected ~~((by choosing))~~ if you choose a survivor ~~((feature))~~ option.

(3) What are my benefit options?

(a) **Maximum benefit ~~((allowance - no survivor feature))~~ (nonsurvivor option).** The department will pay you the maximum benefit allowed by statute. Under this option you will receive a monthly retirement ~~((allowance))~~ benefit throughout your lifetime. Your monthly ~~((allowance))~~ benefit will cease upon your death, and any remaining balance of accumulated contributions will be:

(i) Retained by the retirement fund if you retired for service under RCW 41.32.497 or 41.32.498; or

(ii) Paid according to subsection (9) of this section if you retired because of disability and were receiving a monthly retirement ~~((allowance))~~ benefit under RCW 41.32.550 (1) (c).

(b) **Option one: Standard ~~((allowance))~~ benefit for service retirement ~~((no survivor feature))~~ nonsurvivor option.** The department will pay you a monthly retirement ~~((allowance))~~ benefit throughout your lifetime. Your monthly ~~((allowance))~~ benefit will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (9) of this section.

(i) This benefit option has a lower monthly ~~((allowance))~~ benefit than the **maximum benefit ~~((allowance))~~** in (a) of this subsection because, with this option, any remaining accumulated contributions will be paid to your beneficiaries upon your death.

(ii) If you are retiring because of disability under RCW 41.32.550 (1)(c), you will not benefit from this option because your beneficiaries will receive any remaining accumulated contributions under the maximum benefit ~~((allowance))~~ in (a) of this subsection.

(c) **Option two: Joint and ~~((whole allowance))~~ one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ~~((allowance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross

monthly ~~((allowance))~~ benefit equal to ~~((the))~~ your gross monthly ~~((retirement allowance you were receiving))~~ benefit.

(d) **Option three: Joint and ~~((one-half allowance))~~ fifty percent benefit.** The department will pay you a reduced monthly retirement ~~((allowance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly ~~((allowance))~~ benefit equal to ~~((one-half of the gross monthly retirement allowance you were receiving))~~ fifty percent of your gross monthly benefit.

(e) **Option four: Joint and two-thirds ~~((allowance))~~ benefit** ~~((available to members retiring on or after January 1, 1996))~~.¹ The department will pay you a reduced monthly retirement ~~((allowance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross monthly ~~((allowance))~~ benefit equal to two-thirds (66.667%) of ~~((the))~~ your gross monthly ~~((retirement allowance you were receiving))~~ benefit.

(4) Do I need my spouse's consent on the option I choose? The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's notarized ~~((signature indicating))~~ consent ~~((to the retirement option you select))~~. If you do not provide spousal consent, the department will pay you a monthly retirement ~~((allowance))~~ benefit based on option three (joint and ~~((one-half allowance) and record))~~ fifty percent benefit with your spouse as the survivor beneficiary as required by RCW 41.32.530(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.530(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (5) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(5) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(6) **What is the supplemental COLA option?** In addition to choosing a retirement benefit option described in subsection (3) of this section, you may choose a supplemental annual COLA. If you select this option, your monthly retirement ~~((allowance))~~ benefit will be ~~((actuarially))~~ reduced to offset the cost of this benefit.

(7) **What happens if I choose a benefit option with a survivor ~~((feature))~~ option and my survivor beneficiary dies before I do?** ~~((Your monthly retirement allowance will increase, provided you submit proof of your survivor benefi-~~

ciary's death to the department. The increase will begin accruing the first day of the month following the death.

(a) ~~Members who retire on or after January 1, 1996:~~ Your increased monthly allowance will be:

(i) The amount you would have received had you chosen the maximum benefit at the time of retirement;

(ii) Minus any reduction in the maximum allowance resulting from a withdrawal of contributions;

(iii) Plus any COLAs you received prior to your survivor beneficiary's death, based on your original option selection.

Example:

Lucinda retires from TRS Plan 1 in 1996. Lucinda withdraws some of her contributions, which actuarially reduces her maximum monthly allowance from \$2,000 to \$1,963.86. She chooses a benefit option with a survivor feature, and names Garth, her husband, as her survivor beneficiary. As a result, Lucinda's monthly allowance is further reduced from \$1,963.86 to \$1,846.03. Garth dies in January 2001. Lucinda's monthly allowance will increase to \$1,963.86, the amount she would have received had she chosen the maximum benefit option (after reduction for her withdrawals). The total amount of the COLAs she received (based on her prior monthly allowance) will be added to the \$1,963.86.

(b) ~~Members who retired before January 1, 1996:~~ Your monthly retirement allowance will be adjusted according to the provisions of RCW 41.32.530(3-). If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(8) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the maximum benefit option or the standard ~~((allowance))~~ benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor ~~((feature))~~ option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option ~~((with a survivor feature))~~ and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ~~((allowance))~~ benefit. You may exercise this option one time only.

(9) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the ~~((annuity payments))~~ retirement benefit paid equals the amount of your

accumulated contributions at the time of retirement, the balance will be paid according to this subsection.

(i) Except as provided in (a)(ii) of this subsection, any remaining balance will be paid to the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you retired for service and chose the maximum benefit option, any remaining balance will be retained by the retirement fund.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ~~((allowance))~~ benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid to the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(10) For more information, see RCW 41.32.530 and 41.32.550.

¹ Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-112-505 What are ~~((the))~~ my TRS Plan 2 or Plan 3 retirement benefit options ~~((for Plan 2 and 3 members))~~? Upon retirement for service under RCW 41.32.765 or 41.32.875, or disability under RCW 41.32.790 or 41.32.880, you must choose to have the defined benefit portion of your retirement ~~((allowance))~~ benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly ~~((allowance))~~ benefit after my death?** Options described in subsection (2)(b), (c), and (d) of this section ~~((include a survivor feature))~~ will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ~~((allowance))~~ benefit after your death is referred to as your "survivor beneficiary." ~~((Upon))~~ After your death, your survivor beneficiary will ~~((be entitled to))~~ receive a monthly ~~((allowance))~~ benefit for the duration of ~~((his or her))~~ their life. Your monthly retirement ~~((allowance))~~ benefit will be ~~((actuarially))~~ reduced to offset the cost of the survivor ~~((feature))~~ option. See WAC 415-02-380 for more information on how your monthly ~~((allowance is))~~ benefit will be affected ~~((by choosing))~~ if you choose a survivor ~~((feature))~~ option.

(2) **What are my benefit options?**

(a) **Option one: Standard ~~((allowance))~~ benefit for service retirement** ~~((no survivor feature))~~ nonsurvivor option. The department will pay you a monthly retirement ~~((allowance))~~ benefit throughout your lifetime. Your monthly ~~((allowance))~~ benefit will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (7) of this section.

(b) **Option two: Joint and ~~((whole allowance))~~ one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ~~((allowance))~~ benefit throughout your lifetime. After your death, ~~((the department will pay))~~ your survivor beneficiary will receive a gross

monthly ~~((allowance)) benefit~~ equal to ~~((the)) your~~ gross monthly ~~((retirement allowance you were receiving)) benefit.~~

(c) **Option three: Joint and ~~((one-half allowance)) fifty percent survivor benefit.~~** The department will pay you a reduced monthly retirement ~~((allowance)) benefit~~ throughout your lifetime. After your death, ~~((the department will pay)) your survivor beneficiary will receive a gross monthly ((allowance)) benefit~~ equal to ~~((one-half of the gross monthly retirement allowance you were receiving)) fifty percent of your gross monthly benefit.~~

(d) **Option four: Joint and two-thirds ~~((allowance (available to members retiring on or after January 1, 1996))) survivor benefit.~~**¹ The department will pay you a reduced monthly retirement ~~((allowance)) benefit~~ throughout your lifetime. After your death, ~~((the department will pay)) your survivor beneficiary will receive a gross monthly ((allowance)) benefit~~ equal to two-thirds (66.667%) of ~~((the)) your~~ gross monthly ~~((retirement allowance you were receiving)) benefit.~~

(3) Do I need my spouse's consent on the option I choose? The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must ((submit)) provide your spouse's notarized ((signature indicating)) consent ((to the retirement option you selected)). If you do not provide spousal consent, the department will pay you a monthly retirement ~~((allowance)) benefit~~ based on option three (joint and ~~((one-half allowance) and record)) fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).~~

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

(d) If your survivor beneficiary has been designated by a dissolution order under RCW 41.50.790, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor ~~((feature)) option~~ and my survivor beneficiary dies before I do?** ~~((Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death.~~

(a) **Members who retire on or after January 1, 1996:** Your increased monthly allowance will be:

(i) ~~The amount you would have received had you chosen the standard allowance option; plus~~

(ii) ~~Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.~~

Example:

~~Agnes retires from TRS Plan 2 in 1996. She chooses a benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes's monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Beatrice dies in 2001. Agnes's monthly allowance will increase to \$2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).~~

Year	Standard- Allowance	Survivor- Option plus -COLAs	COLA iner. (3% max)	\$ Increase
1996	2,000.00	1,750.00		0.00
1997		1,750.00	.02	35.00
1998		1,785.00	.03	53.55
1999		1,838.55	.025	45.96
2000		1,884.51	.03	56.54
2001	2,000.00	1,941.05	—	—
			Total COLAs	191.05
Original Monthly Allowance		+ Total COLAs	= New Monthly Allowance	
\$2000		+\$191.05	=\$2,191.05*	

* In the future, Agnes's COLA will be based on her increased monthly allowance.

~~(b) **Members who retired before January 1, 1996:** Your monthly retirement allowance will be adjusted according to the provisions of RCW 41.32.785(3-). If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.~~

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the standard ~~((allowance)) benefit~~ option at the time of retirement and marry after retirement, you may select a benefit option with a survivor ~~((feature)) option~~ and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor ~~((feature))~~ option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ~~((allowance))~~ benefit. You may exercise this option one time only.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 2:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ~~((allowance))~~ benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ~~((allowance))~~ benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement ~~((allowance))~~ benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.32.785 and 41.32.790 (Plan 2) and RCW 41.32.851 (Plan 3).

¹ Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 16-21-059, filed 10/14/16, effective 11/14/16)

WAC 415-112-507 How do I apply for TRS retirement benefits? You should apply for retirement benefits at least thirty days before your intended retirement date. You can apply online at the department's website or by submitting to the department:

(1) A completed, signed, and notarized retirement application, including:

(a) Your selection of one of the benefit options described in WAC 415-112-493.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's ~~((notarized signature indicating))~~ consent ~~((to the retirement option you selected. See WAC 415-112-015(10)).~~

~~(i) If you are married and you do not provide spousal consent, the department will pay you a monthly retirement allowance based on WAC 415-112-504 (3)(d) for Plan 1 or WAC 415-112-505 (2)(e) for Plan 2 and 3 members, option three (joint and one-half survivor benefit allowance) and record your spouse as the survivor beneficiary as required by RCW 41.32.530(2), 41.32.785(2), and 41.32.851(2).~~

~~(ii) Spousal consent is not required if a dissolution decree designating your survivor beneficiary under RCW 41.50.790 was filed with the department at least thirty days prior to your retirement date))~~ may be required as described in WAC 415-112-504 (Plan 1) or WAC 415-112-505 (Plan 2 or Plan 3).

(2) Evidence of your birth date, only if requested by the department, such as a photocopy of your birth certificate, passport or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department. If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

WSR 20-06-045

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed February 28, 2020, 3:18 p.m., effective March 30, 2020]

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

Purpose: Modifications are being made to add new types of recreational equipment on campus and restrictions on usage.

Citation of Rules Affected by this Order: Amending WAC 172-118-020 and 172-118-040.

Statutory Authority for Adoption: RCW 28B.35.120 (12), 42.56.070.

Adopted under notice filed as WSR 20-01-157 on December 17, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 28, 2020.

Joseph Fuxa
Policy and Compliance Manager

AMENDATORY SECTION (Amending WSR 13-24-120, filed 12/4/13, effective 1/4/14)

WAC 172-118-020 Definitions. For the purposes of this chapter, recreational equipment includes, but is not limited to, skateboards, longboards, roller skates, inline skates, skate shoes, foot scooters, hoverboards/self-balancing scooters and similar equipment.

AMENDATORY SECTION (Amending WSR 13-24-120, filed 12/4/13, effective 1/4/14)

WAC 172-118-040 Use of recreational equipment. Recreational equipment may only be used on asphalt or concrete campus walkways and sidewalks, and only in a way that does not interfere with pedestrian traffic or other campus activities.

(1) Recreational equipment is prohibited on grass, benches, stairways, steps, sculpture, art work, hand rails, inside buildings, plazas, walls, barriers, brick walkways, and any other campus property other than paved walkways and sidewalks.

(2) The storage or possession of hoverboards/self-balancing scooters in residence halls, university apartments, academic buildings, administrative buildings, recreational facilities, and all other structures on property owned or controlled by EWU is prohibited.

(3) Speeds in excess of five miles per hour are prohibited.

~~((3))~~ (4) Performing stunts or tricks is prohibited.

~~((4))~~ (5) Any use of recreational equipment that may cause property damage and/or endanger the user or others is prohibited.

~~((5))~~ (6) Recreational equipment users shall yield the right of way to pedestrians at all times.

WSR 20-06-058
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
(Board of Boiler Rules)

[Filed March 3, 2020, 10:05 a.m., effective April 3, 2020]

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

Purpose: The purpose of this rule making is to update and clarify existing rules and increase fees in the boiler rules, chapter 296-104 WAC, Board of boiler rules—Substantive. The board of boiler rules reviews the rules on a regular basis to ensure the rules are consistent with national safety standards for boilers and pressure vessels, and industry practice.

Rule making to this chapter will:

- Reorganize requirements for control and limit devices and fuel controls for power, low-pressure, and heating boilers and HLW potable water heaters to make the installation rules easier to understand and use. Additional changes include, but are not limited to:
 - Requiring control and limit devices to be tested or verified by a means acceptable by the jurisdiction for automatically fired power boilers, low pressure heating boilers, and HLW potable water heaters to allow for new technology;
 - Allowing all boilers in a room to connect to an existing remote shutdown switch for the remote shutdown of all the boilers;
 - Clarifying that all boilers in a room that meet the input requirements should be added to the remote shutdown switch when installing a new boiler to improve public safety;
 - Requiring that all automatically fired boilers with a heating input greater than 400,000 BTU/hr., including electrical boilers with input greater than 117 kW, installed after December 2004, to have a remote shutdown switch or circuit breaker to create consistency with remote shutdown switch requirements for all boilers; and
 - Requiring that HLW potable hot water heaters with a heating input greater than 400,000 BTU/hr. (117 kW), installed after January 1, 2018, to have a remote shutdown switch or circuit breaker to create consistency with remote shutdown switch requirements for all boilers.
- Convert existing policies requiring entities repairing or altering boilers or pressure vessels to send a controlled copy of a quality control manual to the department prior to starting work, and to send a checklist and certain forms to the department within forty-five days of the date the work is completed, into rule.

This rule making also increases fees by the fiscal-growth factor of 5.08 percent. This is the state's office of financial management's maximum allowable fiscal growth factor rate for fiscal year 2020. A fee increase is necessary to support the program's operating expenses for inspections and other program public safety activities.

Citation of Rules Affected by this Order: Amending WAC 296-104-301 Installation—What control and limit devices are required on automatically fired boilers after June 1989?, 296-104-302 Installation—What fuel controls are required on automatically fired boilers after December 1998?, 296-104-303 Installation—What control and limit devices are required on automatically fired boilers after December 2004?, 296-104-503 Repairs—What are the requirements for nonnuclear boilers and unfired pressure vessel repairs and alterations?, and 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Adopted under notice filed as WSR 20-02-115 on January 2, 2020.

Changes Other than Editing from Proposed to Adopted Version: WAC 296-104-302 Installation—What fuel con-

trols are required on automatically fired boilers after December 1998? differs from the proposed to adopted version. Sub-section (1)(b) of this section was amended to correct the word "fee" to "feed."

A final cost-benefit analysis is available by contacting Alicia Curry, Department of Labor and Industries, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, website <http://www.Lni.wa.gov/rulemaking-activity>.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: March 3, 2020.

Terry Chapin, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 04-21-069, filed 10/19/04, effective 1/1/05)

WAC 296-104-301 Installation—What control and limit devices are required on automatically fired power boilers after June 1989? In addition to those requirements listed in WAC 296-104-300, the following are also required:

(1) All steam power boilers (~~that are automatically fired low pressure steam heating boilers, small power boilers, and power steam boilers without a constant attendant who has no other duties~~) shall be equipped with:

(a) Two high steam pressure limit controls, the highest of which shall be provided with a manual reset.

(b) Two low-water fuel cutoffs, one of which shall be provided with a manual reset device and independent of the feed water controller.

~~((e))~~ (2) Coil type flash steam boilers may use two high-temperature limit controls, one of which shall have a manual reset. This is instead of the low-water fuel cutoff.

~~((d)) All control and limit devices shall be independently connected and electrically wired in series.~~

(2) All automatically fired hot water supply, low pressure hot water heating boilers, and power hot water boilers)

(3) All high temperature water (greater than 250°F) power boilers shall be equipped with:

(a) Two high-temperature limit controls, the highest of which shall be provided with a manual reset.

(b) ~~((one))~~ Two low-water fuel cutoffs ~~((with a)), one of which shall be provided with a manual reset device~~ and independent of the feed water controller.

~~((e)) For coil type hot water boilers a low water flow limit control installed in the circulating water line may be used instead of a low water fuel cutoff.~~

~~((d))~~ (4) All controls and limit devices shall be ~~((independently connected and electrically wired in series))~~ tested or verified by means acceptable by the jurisdiction.

(5) For installations after December 2004 - All automatically fired power boilers with input greater than 400,000 Btu/hr, including electric boilers with input greater than 117 kW, shall have a manually operated remote shutdown switch or circuit breaker. When an existing remote shutdown switch exists, all boilers may be connected to the existing switch to allow for remote shutdown of all boilers in the room. When an additional boiler is added to the room where an existing remote shutdown switch does not exist, all boilers meeting the input requirements should be added to the new remote shutdown switch. Activation of the emergency shutdown switch or circuit breaker shall immediately shut off the fuel or energy supply and initiate the boiler shutdown sequence in accordance with manufacturer's recommendations where applicable. The shutdown switch should be located just outside the boiler room door and marked for easy identification. Consideration should be given to the type and location of the switch to safeguard against tampering. If the boiler room door is on the building exterior, the switch should be located just inside the door. If there is more than one door to the boiler room, there should be a switch located at each door.

AMENDATORY SECTION (Amending WSR 08-24-072, filed 12/1/08, effective 1/1/09)

WAC 296-104-302 Installation—What ~~((fuel controls are required on automatically fired boilers after December 1998))~~ control and limit devices are required on automatically fired hot water heating, hot water supply boilers, coil type hot water heating boilers, low pressure steam boilers, and HLW potable water heaters after June 1989? In addition to those requirements listed in WAC ~~((296-104-301))~~ 296-104-300, the following are also required ~~((with regard to installations or refits of gas, oil, or combinations of gas or oil:~~

(1) ~~All boilers installed or refitted after December 1998, shall be equipped with suitable primary (flame safeguards) safety controls, safety limit switches, and burners or electrical elements as required by a nationally or internationally recognized standard.~~

(2) ~~The symbol of the certifying organization that has investigated such equipment as having complied with a nationally or internationally recognized standard shall be affixed to the equipment and shall be considered evidence that the unit was manufactured in accordance with that standard. A certifying organization is one that provides uniform testing, examination, and listing procedures under established, nationally or internationally recognized standards, and that is acceptable to the authorities having jurisdiction.~~

(3) ~~These devices shall be installed in accordance with jurisdictional requirements, manufacturer's recommendations, and/or industry standards as applicable.)):~~

(1) All automatically fired hot water heating, hot water supply boilers shall be equipped with:

(a) Two high temperature limit controls, the highest of which shall be provided with a manual reset when heat input is greater than 400,000 Btu/hr (117 kW).

(b) One low-water fuel cutoff with a manual reset device and independent of the feed water controller.

(c) For installations after December 2004, a means shall be provided for testing the operation of hot water heating boiler low-water fuel cutoff(s) without resorting to draining the entire system. Such means shall not render the device(s) inoperable. If the means temporarily isolates the device from the boiler during testing, it shall automatically return to its normal position.

(2) For coil type hot water boilers with heat input greater than 400,000 Btu/hr (117 kW) a low-water flow limit control installed in the circulating water line may be used instead of a low-water fuel cutoff when forced circulation is required to prevent overheating of the tubes.

(3) Automatically fired low pressure steam boilers shall be equipped with:

(a) Two high steam pressure limit controls, the highest of which shall be provided with a manual reset.

(b) Two low-water fuel cutoffs, one of which shall be provided with a manual reset device and independent of the feed water controller.

(4) HLW potable water heaters:

(a) Two temperature limit controls, one being a high-limit temperature control that will automatically cut off the fuel supply.

(b) Heaters with input greater than 400,000 Btu/hr (117 kW) installed after January 1, 2018, shall comply with all items in subsection (6) of this section.

(5) All controls and limit devices shall be tested or verified by means acceptable by the jurisdiction.

(6) For installations after December 2004, all automatically fired boilers with input greater than 400,000 Btu/hr, including electric boilers with input greater than 117 kW, shall have a manually operated remote shutdown switch or circuit breaker. When an existing remote shutdown switch exists, all boilers may be connected to the existing switch to allow for the remote shutdown of all boilers in the room. When an additional boiler is added to the room where an existing remote shutdown switch does not exist, all boilers meeting the input requirements should be added to the new remote shutdown switch. Activation of the emergency shutdown switch or circuit breaker shall immediately shut off the fuel or energy supply and initiate the boiler shutdown sequence in accordance with manufacturer's recommendations where applicable. The shutdown switch should be located just outside the boiler room door and marked for easy identification. Consideration should be given to the type and location of the switch to safeguard against tampering. If the boiler room door is on the building exterior, the switch should be located just inside the door. If there is more than one door to the boiler room, there should be a switch located at each door.

AMENDATORY SECTION (Amending WSR 15-14-100, filed 6/30/15, effective 9/1/15)

WAC 296-104-303 Installation—What ~~((control and limit devices are required on automatically fired boilers after December 2004))~~ fuel controls are required on automatically fired boilers after December 1998? In addition to those requirements listed in WAC ~~((296-104-302))~~ 296-104-301 and 296-104-302, the following are ~~((also))~~ required with regard to installations or refits of gas, oil, or combinations of gas or oil:

~~((1) (All automatically fired boilers with input greater than 400,000 Btu/hr, including electric boilers with input greater than 117 kW shall have a manually operated remote shutdown switch or circuit breaker. Activation of the emergency shutdown switch or circuit breaker shall immediately shut off the fuel or energy supply and initiate the boiler shutdown sequence in accordance with manufacturer's recommendations where applicable. The shutdown switch should be located just outside the boiler room door and marked for easy identification. Consideration should be given to the type and location of the switch to safeguard against tampering. If the boiler room door is on the building exterior, the switch should be located just inside the door. If there is more than one door to the boiler room, there should be a switch located at each door.~~

~~((2) A means shall be provided for testing the operation of hot water heating boiler low-water fuel cutoff(s) without resorting to draining the entire system. Such means shall not render the device(s) inoperable. If the means temporarily isolates the device from the boiler during testing, it shall automatically return to its normal position.))~~ All boilers installed or refitted after December 1998, shall be equipped with suitable primary (flame safeguards) safety controls, safety limit switches, and burners or electrical elements as required by a nationally or internationally recognized standard.

(2) The symbol of the certifying organization that has investigated such equipment as having complied with nationally or internationally recognized standard shall be affixed to the equipment and shall be considered evidence that the unit was manufactured in accordance with that standard. A certifying organization is one that provides uniform testing, examination, and listing procedures under established, nationally or internationally recognized standards, and that is acceptable to the authorities having jurisdiction.

(3) These devices shall be installed in accordance with jurisdictional requirements, manufacturer's recommendations, and/or industry standards as applicable.

AMENDATORY SECTION (Amending WSR 08-24-072, filed 12/1/08, effective 1/1/09)

WAC 296-104-503 Repairs—What are the requirements for nonnuclear boilers and unfired pressure vessel repairs and alterations? Repairs and alterations to standard nonnuclear boilers and pressure vessels shall be made in accordance with the rules of the National Board Inspection Code (NBIC), Part 3 as adopted in WAC 296-104-502(1). ~~((Additionally, repairs and alterations to nonstandard boilers and pressure vessels, as addressed in WAC 296-104-215, must be authorized by the chief inspector.))~~

Repairs and alterations (~~(may)~~ shall) be made by an organization in possession of a valid Certificate of Authorization for use of the national board "R" symbol stamp (~~(issued by the national board provided such repairs/alterations are within the scope of authorization.~~

~~Owner/user special inspectors may only accept repairs and alterations to boilers and unfired pressure vessels operated by their respective companies per RCW 70.79.130.~~

Documentation of repairs and alterations, in accordance with the requirements of the National Board Inspection Code (NBIC) as adopted in WAC 296-104-502(1), shall be submitted to the department). The national board "R" symbol stamp organization shall comply with the following jurisdictional requirements:

(1) Assign and submit a current "controlled copy" of their quality control manual to the jurisdiction prior to starting mechanical work in Washington state.

(2) Submit a completed copy of the "process traveler/checklist" signed off by qualified company QC personnel and the national board commissioned inspector with "R" endorsement for each repair/alteration job within forty-five days of the completion of the physical work.

(3) Submit a completed copy of the completed "R-1" (for repairs, also for routine repairs) form or the completed "R-2" (for alterations) form within forty-five days of the completion of the physical work.

Repairs and alterations to nonstandard boilers and pressure vessels, as addressed in WAC 296-104-215, must be authorized by the chief inspector.

AMENDATORY SECTION (Amending WSR 19-15-120, filed 7/23/19, effective 9/1/19)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit fee of ~~\$(56.16))~~ 59.00 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is ~~\$(24.23))~~ 25.40.

Hot water heaters per RCW 70.79.090, inspection fee: ~~\$(7.38))~~ 7.70.

The department shall assess a \$7.00 fee, per object, for processing of jurisdictional inspection reports to any authorized in-service inspection agency or inspector who does not file the report directly into the department's electronic inspection report system.

Heating boilers:	Internal	External
Cast iron—All sizes	\$(40.87)) <u>42.90</u>	\$(32.65)) <u>34.30</u>
All other boilers less than 500 sq. ft.	\$(40.87)) <u>42.90</u>	\$(32.65)) <u>34.30</u>
500 sq. ft. to 2500 sq. ft.	\$(81.74)) <u>85.80</u>	\$(40.87)) <u>42.90</u>

Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$(32.65)) <u>34.30</u>	\$(16.01)) <u>16.80</u>
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Power boilers:	Internal	External
Less than 100 sq. ft.	\$(40.87)) <u>42.90</u>	\$(32.65)) <u>34.30</u>
100 sq. ft. to less than 500 sq. ft.	\$(49.50)) <u>52.00</u>	\$(32.65)) <u>34.30</u>
500 sq. ft. to 2500 sq. ft.	\$(81.74)) <u>85.80</u>	\$(40.87)) <u>42.90</u>

Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$(32.65)) <u>34.30</u>	\$(16.01)) <u>16.80</u>
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Pressure vessels:
Square feet shall be determined by multiplying the length of the shell by its diameter.

	Internal	External
Less than 15 sq. ft.	\$(32.65)) <u>34.30</u>	\$(24.23)) <u>25.40</u>
15 sq. ft. to less than 50 sq. ft.	\$(48.46)) <u>50.90</u>	\$(24.23)) <u>25.40</u>
50 sq. ft. to 100 sq. ft.	\$(56.57)) <u>59.40</u>	\$(32.65)) <u>34.30</u>

For each additional 100 sq. ft. or any portion thereof	\$(56.47)) <u>59.30</u>	\$(16.01)) <u>16.80</u>
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Nonnuclear shop inspections, field construction inspections, and special inspection services:

For each hour or part of an hour up to 8 hours	\$(49.50)) <u>52.00</u>
For each hour or part of an hour in excess of 8 hours	\$(73.94)) <u>77.60</u>

Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:

For each hour or part of an hour up to 8 hours	\$(73.94)) <u>77.60</u>
For each hour or part of an hour in excess of 8 hours	\$(115.64)) <u>121.50</u>

Nonnuclear triennial shop survey and audit:
When state is authorized inspection agency:

For each hour or part of an hour up to 8 hours	\$(49.50)) <u>52.00</u>
For each hour or part of an hour in excess of 8 hours	\$(73.94)) <u>77.60</u>

When insurance company is authorized inspection agency:

For each hour or part of an hour up to 8 hours	\$(73.94)) <u>77.60</u>
For each hour or part of an hour in excess of 8 hours	\$(115.64)) <u>121.50</u>

Examination fee: A fee of \$((~~91.52~~)) 96.10 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of \$((~~49.40~~)) 51.90 for initial work card. A fee of \$((~~30.68~~)) 32.20 for annual renewal.

If a special inspector changes companies: A work card fee of \$((~~49.40~~)) 51.90.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of \$((~~460.30~~)) 483.60 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 20-06-071

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed March 3, 2020, 3:57 p.m., effective April 3, 2020]

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

Purpose: The department of revenue intends to repeal WAC 458-57-015 and 458-57-017.

WAC 458-57-015 applies to deaths occurring on or before May 16, 2005. It has been fifteen years since the rule was applicable and has been replaced with WAC 458-57-105 through 458-57-165.

There is no longer statutory authority for WAC 458-57-017. The generation-skipping transfer tax was repealed effective May 17, 2005. If the taxable termination or distribution is the result of a death that occurred on or after May 17, 2005, there is no Washington generation-skipping transfer tax.

Citation of Rules Affected by this Order: Repealing WAC 458-57-015 and 458-57-017.

Statutory Authority for Adoption: RCW 82.01.060 and 83.100.200.

Adopted under notice filed as WSR 19-24-107 on December 4, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 2.

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

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

Date Adopted: March 3, 2020.

Atif Aziz
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 458-57-015 Valuation of property, property subject to estate tax, how to calculate the tax.

WAC 458-57-017 Property subject to generation-skipping transfer tax, how to calculate the tax, allocation of generation-skipping transfer exemption.

WSR 20-06-077

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed March 4, 2020, 8:39 a.m., effective April 4, 2020]

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

Purpose: The agency revised this rule to comply with the requirements of section 1004 of the Support for Patients and Communities Act under 42 U.S.C. 1396a(a) by more accurately detailing the drug use review (DUR) activities to include reference to prior authorization requirements adding subsection (1)(a)(iv) and (2)(c) and include the activities of prescribing practitioners in addition to dispensing pharmacies in subsection (2) and (2)(b). The agency also revised subsection (1)(b) to update language in accordance with the Support Act including prescribing billing practices that indicate abuse or excessive utilization.

Citation of Rules Affected by this Order: Amending WAC 182-530-4050.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, H.R. 6, Section 1004, 42 U.S.C. 1396a(a), 42 U.S.C. 1396r-8(g).

Adopted under notice filed as WSR 20-02-078 on December 27, 2019.

Changes Other than Editing from Proposed to Adopted Version:

WAC 180-530-4050 (1)(a)(iv)	
Proposed	Obtain authorization prior to dispensing when required by the agency or an agency designee.

Adopted	Obtain authorization as described in WAC 182-530-3200 prior to dispensing when required by the agency or an agency designee.
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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 4, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-01-046, filed 12/9/15, effective 1/9/16)

WAC 182-530-4050 Drug use and claims review. (1)

The agency's drug use review (DUR) consists of:

(a) A prospective drug use review (Pro-DUR) that requires all pharmacy providers to:

(i) Obtain patient histories of allergies, idiosyncrasies, or chronic condition or conditions which may relate to drug utilization;

(ii) Screen for potential drug therapy problems; ~~((and))~~

(iii) Counsel the patient in accordance with existing state pharmacy laws and federal regulations; and

(iv) Obtain authorization as described in WAC 182-530-3200 prior to dispensing when required by the agency or an agency designee.

(b) A retrospective drug use review (Retro-DUR), in which the agency provides for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, ~~((or))~~ excessive utilization, inappropriate or medically unnecessary care, or prescribing billing practices that indicate abuse or excessive utilization among physicians, pharmacists, and individuals receiving benefits.

(2) The agency reviews a periodic sampling of claims to determine if drugs are appropriately ordered, prescribed, administered, dispensed, and billed. If a review of the sample finds that a provider is inappropriately ordering, prescribing, administering, dispensing, or billing for drugs, the agency may implement corrective action that includes, but is not limited to:

(a) Educating the provider regarding the problem practice or practices;

(b) Requiring the provider to maintain specific documentation in addition to the normal documentation require-

ments regarding the provider's ordering, prescribing, administering, dispensing, or billing ~~((actions))~~ practices;

(c) Applying additional provider-specific requirements for obtaining authorization prior to ordering, prescribing, administering, dispensing, or billing for drugs;

(d) Recouping the payment for the drug or drugs; or ~~((e))~~ (e) Terminating the provider's core provider agreement (CPA).