

## WSR 23-20-003

## PROPOSED RULES

## STATE BOARD OF EDUCATION

[Filed September 20, 2023, 4:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-052.

Title of Rule and Other Identifying Information: High school graduation requirements.

Hearing Location(s): On November 14, 2023, at 3:30 p.m., at the Salish Conference Room, Office of Superintendent of Public Instruction Building, 600 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: December 7, 2023.

Submit Written Comments to: Linda Drake, 600 Washington Street S.E., Olympia, WA 98504, email rulescoordinatorSBE@k12.wa.us, by November 1, 2023.

Assistance for Persons with Disabilities: Contact Jacki Verd, phone 360-725-6025, TTY 360-664-3631, email Jacki.Verd@k12.wa.us, by October 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to implement recent legislation regarding the High School and Beyond Plan (SB [E2SSB] 5243, chapter 271, Laws of 2023) and graduation pathway options (HB 1308, chapter 349, Laws of 2023). The rules implement an additional graduation pathway option, a performance-based pathway. The rules also add additional advanced courses to the list of courses that meet the graduation pathway requirement. In addition, the rules incorporate other requirements of the legislation: Clarifying the purpose of graduation pathways, establishing some additional data and monitoring requirements on the use of graduation pathway options by students, clarifying and adding additional requirements to the high school and beyond plan such as specifying that the plan must be updated annually, that school districts must annually provide students in eighth through 12th grade with comprehensive information about graduation pathway options offered by the district, and directing school districts to provide students with access to the adopted universal high school and beyond plan platform within two years of completion of the platform.

Reasons Supporting Proposal: Additional options that districts may offer for students to be able to meet the graduation pathway requirement helps to increase personalized education for each student, addressing the statutory purpose of the state board of education (RCW 28A.305.130). In particular, the performance-base graduation pathway option is intended to respect students' diverse cultures, abilities, and learning styles, as well as allow students to demonstrate the knowledge and skills essential to the goals of RCW 28A.150.210. Rules implementing statute that enhance the high school and beyond plan address goal four of basic education (RCW 28A.150.210(4)), "the importance of work, and finance and how performance, effort, and decisions directly affect future career and educational opportunities.["]

Statutory Authority for Adoption: RCW 28A.305.130.

Statute Being Implemented: RCW 28A.655.250, 28A.655.260, 28A.230.212, 28A.230.215.

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

Name of Proponent: State board of education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 260-725-6024.

A school district fiscal impact statement has been prepared RCW 28A.305.135.

## SCHOOL DISTRICT FISCAL IMPACT STATEMENT

WSR: 23-11-052.	<b>Title of Rule:</b> High school graduation requirements (SB [E2SSB] 5243 and HB 1308).	<b>Agency:</b> SDF - School district fiscal impact - SPI.
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**Part I: Estimates:** No fiscal impact.

**Estimated Cash Receipts To:** No estimated cash receipts.

**Estimated Expenditures From:** No estimated expenditures.

**Estimated Capital Impact:** No estimated capital impact.

**Part II: Narrative Explanation:**

**II. A - Brief Description Of What the Measure Does That Has Fiscal Impact:** None.

**II. B - Cash Receipts Impact:** None.

**II. C - Expenditures:** None.

**Part III: Expenditure Detail:**

**III. A - Expenditures by Object or Purpose:** None.

**Part IV: Capital Budget Impact:** None.

A copy of the statement may be obtained by contacting Linda Drake, 600 Washington Street S.E., Olympia, WA 98504, phone 360-725-6025, TTY 360-664-3631, email rulescoordinatorSBE@k12.wa.us.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are not subject to violation by a nongovernment party, and the rules adopt Washington state statutes without material change.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

September 20, 2023  
Randy Spaulding  
Executive Director

## OTS-4947.1

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-201 Overview of the requirements for a high school diploma beginning in 2020.** For students who enter the ninth grade or begin the equivalent of a four-year high school program as of July 1, 2016, (the class of 2020) or later, the graduation requirements shall consist of:

(1) State credit and subject area requirements as established in WAC 180-51-067, 180-51-068, or 180-51-210 in this chapter, depending on the credit graduation requirements aligned with the year the student entered ninth grade; and, credit and subject area requirements established by local school boards. Students in the class of 2019 and

the class of 2020 in districts with a waiver to delay implementation of WAC 180-51-068 shall graduate with the credit and subject area requirements of WAC 180-51-067 until the expiration of the waiver.

(2) A high school and beyond plan that must include the minimum requirements established in RCW 28A.230.090 and WAC 180-51-220 in this chapter. Local school boards may establish additional requirements for a high school and beyond plan to serve the needs and interests of its students. Any decision on whether a student has met the requirement of a high school and beyond plan shall be made by the district.

(3) A graduation pathway option. Students must meet the requirements of at least one of ~~((eight))~~ nine graduation pathway options in chapter 28A.655 RCW and WAC 180-51-230.

~~((4) By December 2022 the state board of education will make recommendations to the legislature for policy changes that would require new legislation to address including: Barriers school districts have to offering all of the graduation pathways, equitable student access to all of the graduation pathways, modifications or additions to the pathways, or other challenges to implementing graduation pathways. Based on the analysis of the pathways and/or other feedback received during implementation of graduation pathways the state board of education may initiate rule making to address changes allowed within current statute.))~~

[Statutory Authority: RCW 28A.230.090. WSR 20-01-101, § 180-51-201, filed 12/13/19, effective 1/13/20.]

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-220 High school and beyond plan.** (1) Each student must have a high school and beyond plan ~~((, initiated during seventh or eighth grade with the administration of a))~~ informed by a career interest and skills inventory ~~((, to guide the student's high school experience and inform course-taking that is aligned with the student's goals for education or training and career after high school. School districts are encouraged to develop and utilize high-quality high school and beyond plan tools.))~~ administered by seventh grade to inform eighth grade course-taking. By the end of the eighth grade, each student will have begun a high school and beyond plan that includes a plan for course-taking in the first year of high school that aligns with graduation requirements and the student's high school and post-high school goals.

(2) Beginning in the 2020-21 school year, each school district must have an electronic high school and beyond plan platform available to all students ~~((; districts may utilize one of the electronic platforms on the list that the office of the superintendent of public instruction creates and posts on its website. Districts are encouraged to utilize electronic high school and beyond platforms that meet the criteria specified in chapter 28A.230 RCW.~~

~~((2))~~ who are required to have a high school and beyond plan. Within two years of completion of a universal online high school and beyond plan platform in alignment with the requirements in RCW 28A.230.215, school districts must provide students with access to the adopted universal platform.

(3) Required elements of ~~((the))~~ all high school and beyond plans must at minimum include:

(a) Identification of career goals and interests aided by a skills and interest assessment.

(b) Identification of secondary and postsecondary education and training goals.

(c) A four-year plan for courses taken in high school that satisfies state and local graduation requirements and aligns with students' secondary and postsecondary goals that may include education, training, and career~~((s))~~ preparation.

(d) Identification of options for satisfying state and local graduation requirements, including ~~((academic acceleration pursuant to RCW 28A.320.195, that could include dual credit courses, career and technical education, and other programs that align with the student's educational and career goals. This includes identification of the graduation pathway option(s) the student intends to complete to meet their educational and career goals))~~:

(i) Available advanced course sequences per the school district's academic acceleration policy, as described in RCW 28A.320.195.

(ii) Dual credit courses.

(iii) Career and technical education courses and programs, including career and technical education equivalency courses that can satisfy core subject area graduation requirements under RCW 28A.230.097.

(iv) Work-based learning opportunities that can lead to technical college certifications and apprenticeships.

(v) Mastery-based credit opportunities, including options for earning the Seal of Biliteracy.

(vi) If applicable, opportunities for credit recovery and acceleration, including partial and mastery-based credit accrual to eliminate barriers for on-time grade level progression and graduation per RCW 28A.320.192.

(e) A current resume or activity log that provides a written compilation of the student's education, any work experience, and any community service, and how the district recognizes community service pursuant to RCW 28A.320.193.

(f) Evidence that the student has received information on federal and state financial aid programs that help pay for the costs of post-secondary programs, including evidence that the student has received information about the following:

(i) The college bound scholarship program established in chapter 28B.118 RCW, the Washington college grant created in RCW 28B.92.200, and other scholarship opportunities.

(ii) Documentation necessary for completing financial aid applications, including at a minimum the Free Application for Federal Student Aid (FAFSA) or the Washington application for state financial aid (WASFA).

~~((ii))~~ (iii) Application ~~((timeliness))~~ and submission deadlines.

~~((iii))~~ (iv) The importance of submitting applications early.

~~((iv))~~ (v) Information specific to students who are or have been ~~((in foster care))~~ the subject of a dependency proceeding pursuant to chapter 13.34 RCW.

~~((v))~~ (vi) Information specific to students who are, or are at risk of, ~~((being homeless))~~ experiencing homelessness.

~~((vi))~~ (vii) Information specific to students whose family member or guardians will be required to provide financial and tax information necessary to complete the application.

~~((vii))~~ (viii) Opportunities to participate in sessions that assist students and, when necessary, their family members or guardians, in filling out financial aid applications.

~~((viii))~~ (ix) A sample financial aid letter and a link to the financial aid calculator created in RCW 28B.77.280.

(x) Information provided on the Washington student achievement council website concerning each of the state and federal financial aid applications in this subsection, in accordance with RCW 28A.300.815.

~~((ix) Information on college bound scholarship application and eligibility.)~~

(g) As established by RCW 28A.230.097, if a student completes a career and technical education equivalency course that is transcribed as a core subject area course to meet graduation requirements, then a record showing that the career and technical education course was used to meet a core course must be retained in the student's high school and beyond plan. This record may be useful if the student pursues education, training, or a career in the same or related field as the career and technical education course.

~~((3))~~ (4) High school and beyond plan process and development.

~~((Each student's high school and beyond plan must be initiated by seventh or eighth grade. Before or at the initiation of the plan))~~ By seventh grade, each student must be administered a career interest and skills inventory that will help inform the student's ~~((ninth))~~ eighth grade course taking and initial identification of their education and career goals.

~~((School districts are encouraged to involve parents and guardians in the process of developing and updating the high school and beyond plan. The plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district. Districts are also encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible.))~~ By eighth grade, each student must have begun development of a high school and beyond plan that includes a proposed plan for first-year high school courses aligned with graduation requirements and secondary and postsecondary goals.

(c) Seventh and eighth grade students must be informed of the college bound scholarship program established in chapter 28B.118 RCW. Students ~~((in foster care, students who are dependents of the state))~~ who are or have been the subject of a dependency proceeding pursuant to chapter 13.34 RCW, students who are or who are at risk of experiencing homelessness, and ninth grade students who may be eligible must also be provided with information on the program. Students in the college bound scholarship program should be reminded about program requirements to remain eligible and provided with information about filling out a financial aid application in their senior year.

~~((Students who have not earned a score of level 3 or level 4 on the middle school math state assessment must include in their plan taking math courses in ninth and tenth grade. The math courses may include career and technical education equivalencies in math, established in RCW 28A.230.097.~~

~~((e))~~ With staff support, students must update their high school and beyond plan annually, at a minimum, to review academic progress and inform future course-taking, including the potential impact of

course selections on postsecondary opportunities. The review may include in-school or out-of-school opportunities that would help prepare students for their career or educational goals, such as summer learning opportunities, internships, student leadership organizations and clubs, and community service.

(e) The high school and beyond plan must be updated in the tenth grade to reflect high school assessment results in RCW 28A.655.061, ensure student access to advanced course options per the district's academic acceleration policy in RCW 28A.320.195, assess progress toward identified goals, and revised as necessary for changing interests, goals, and needs.

(f) School districts shall involve parents and legal guardians to the greatest extent feasible in the process of developing and updating the high school and beyond plan. The plan must be provided to the student and the student's parents or legal guardians in a language the student and parents or legal guardians understand and in accordance with the school district's language access policy and procedures as required under chapter 28A.183 RCW, which may require language assistance for students and parents or legal guardians with limited-English proficiency.

(g) School districts must annually provide students in grades eight through 12 and their parents or legal guardians with comprehensive information about the graduation pathway options offered by the district and are strongly encouraged to begin providing this information in sixth grade. School districts must provide this information in a manner that conforms with the school district's language access policy and procedures as required under chapter 28A.183 RCW.

(h) School districts are strongly encouraged to partner with student-serving, community-based organizations that support career and college exploration and preparation for postsecondary and career pathways. Partnerships may include high school and beyond plan coordination and planning, data sharing agreements, and safe and secure access to individual students' high school and beyond plans.

(i) Students who have not earned a score of level 3 or level 4 on the middle school math state assessment must include in their plan taking a math course in each of ninth and tenth grade. The math courses may include career and technical education equivalencies in math, established in RCW 28A.230.097.

(j) For students who have not earned a level 3 or level 4 on their middle school English language arts exam or their middle school science exam, districts are encouraged to inform students of supports and courses that will address ~~(the)~~ students' learning needs and be considered in ~~((the))~~ students' course-taking plans.

~~((f))~~ (k) The high school and beyond plan must be updated ~~((periodically))~~ annually at a minimum to address:

(i) High school assessment results and junior year course-taking.

(ii) A student's changing interests, goals, and needs, including identification of the graduation pathway option(s) the student intends to complete to meet their educational and career goals.

(iii) Available interventions, academic supports, and courses that will enable students to meet high school graduation credit requirements and graduation pathway requirements.

~~((g))~~ (l) For students meeting graduation requirements in WAC 180-51-068 and 180-51-210, the students' high school and beyond plans should be used to guide the choices of the third credit of high school math and the third credit of high school science. These credits may be earned through career and technical education courses determined to be

equivalent to math and science courses as established in RCW 28A.230.097.

~~((h))~~ (m) A student's high school and beyond plan must inform the student's choice of their graduation pathway option or options in accordance with WAC 180-51-230.

~~((4))~~ (5) For a student with an individualized education program (IEP), the student's IEP and high school and beyond plan ~~((s))~~ must align. Students with an IEP transition plan, which begins during the school year in which they turn ~~((sixteen))~~ 16, may use their transition plan in support of, but not as a replacement for, their high school and beyond plan. The process for developing and updating the student's high school and beyond plans must be similar to and conducted with similar school personnel as for all other students. The student's high school and beyond plans must be updated in alignment with the student's school to postschool transition plan.

~~((5))~~ (6) Any decision on whether a student has met the state board of education's high school graduation requirements for a high school and beyond plan shall remain at the local level. A district may establish additional, local requirements for a high school and beyond plan to serve the needs and interests of its students and the purposes of RCW 28A.230.090.

~~((6))~~ (7) Districts may offer core and elective courses that embed required elements and processes of high school and beyond planning ~~((r))~~ and are encouraged to provide annual credit-bearing options for the delivery and completion of high school and beyond plan elements. Conversely, a high school and beyond planning course or courses may be counted as core or elective credit, as defined in WAC 180-51-210, if the learning standards of the content area are addressed.

[Statutory Authority: RCW 28A.230.090. WSR 20-01-101, § 180-51-220, filed 12/13/19, effective 1/13/20.]

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-230 Graduation pathway options.** (1) Beginning with the graduating class of 2020, each student must meet the requirements of at least one of the ~~((eight))~~ nine graduation pathway options in this section. Each of the graduation pathway options are equally valid for earning a Washington state high school diploma.

(2) School districts are encouraged to make the ~~((eight))~~ nine graduation pathways specified below available to their students and to expand their pathway options until this goal is met ~~((r))~~ yet have discretion in determining which graduation pathway options they will offer.

~~((3))~~ (a) Student access to all pathways offered by a district must not be restricted based on a student's disability. Students receiving special education services must be provided with the services and accommodations outlined in the student's individualized education program to support them in meeting the pathway requirement.

(b) Starting in the sixth grade, school districts are strongly encouraged to annually provide students and their parents or guardians with comprehensive information about graduation pathway options offered by the school district.

(c) Beginning in the eighth grade, school districts must annually provide information about graduation pathway options to students and their parents or guardians as part of the students' high school and beyond plan. The information must be provided in a manner that conforms with the school district's language access policy and procedures as required under RCW 28A.183.040.

(3) The state board of education shall review and monitor the implementation of the graduation pathway options to ensure school district compliance with requirements established under RCW 28A.655.250 and subsection (4) of this section. The reviews and monitoring required by this subsection may be conducted concurrently with other oversight and monitoring conducted by the state board of education. The information shall be collected annually and reported to the education committees of the legislature by January 10, 2025, and biennially thereafter.

(4) At least annually, school districts shall examine data on student groups participating in and completing each graduation pathway option offered by the school district.

(a) At minimum, the data on graduation pathway participation and completion must be disaggregated by the student groups described in RCW 28A.300.042 (1) and (3), and by:

(i) Gender;

(ii) Students who are the subject of a dependency proceeding pursuant to chapter 13.34 RCW;

(iii) Students who are experiencing homelessness as defined in RCW 28A.300.542(4);

(iv) Multilingual/English language learners.

(b) If the results of the analysis required under (a) of this subsection show disproportionate participation and completion rates by student groups, then the school district shall identify reasons for the observed disproportionality and implement strategies as appropriate to ensure the graduation pathway options are equitably available to all students in the school district.

(5) The graduation pathway option(s) used by a student must be in alignment with the student's high school and beyond plan.

~~((4))~~ (6) All assessment scores used for graduation pathways in subsection ~~((5))~~ (7)(a) through ~~((f))~~ (g) of this section will be posted on the state board of education website. Assessment scores that the state board of education is responsible for setting, will only be changed through a public process culminating in official board action in a public board meeting.

~~((5))~~ (7) The following are the ~~((eight))~~ **nine** graduation pathway options:

(a) **Statewide high school assessments.** Meet or exceed the graduation standard established by the state board of education under RCW 28A.305.130 on the statewide high school assessments in English language arts and mathematics as provided for under RCW 28A.655.070.

(b) **Dual credit courses.** Earn at least one high school credit in English language arts and at least one high school credit in mathematics in dual credit courses. For the purposes of this subsection, "dual credit course" means a course in which a student is eligible for both high school credit and college credit at the level of 100 or higher, upon successfully completing the course, by meeting the dual credit course or program criteria established by the local district and the applicable higher education entity. Dual credit courses include running start, college in the high school courses, and career and techni-



cal education dual credit courses. Nothing in this subsection requires a student to pay fees or claim college credit to meet this pathway.

(c) **Transition courses.** Earn high school credit in a high school transition course in English language arts and mathematics, an example of which includes a bridge to college course. For the purposes of this subsection, "high school transition course" means an English language arts or mathematics course offered in high school that, based on the final grade, allows the student to place directly into a credit-bearing college level course at participating institutions of higher education in RCW 28B.10.016, in accordance with established policy and criteria of the local school district and the applicable higher education entity. This definition includes transition courses identified through local agreements between colleges and school districts. English language arts and math high school transition courses must satisfy a student's core or elective credit graduation requirements established by the state board of education in WAC 180-51-210.

(d) **Advanced placement, international baccalaureate, or Cambridge international.** Meet either (d)(i) or (ii) of this subsection:

(i) Earn high school credit, with a grade of C+ or higher in each term, in the following advanced placement, international baccalaureate, or Cambridge international courses in English language arts and mathematics.

(A) For English language arts, successfully complete one high school credit in any of the following courses with a grade of C+ or higher in each term: Advanced placement courses in English language and composition, (~~advanced placement~~) English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, (~~or~~) comparative government and politics, European history, human geography, African American studies, seminar, or research; any of the international baccalaureate individuals and societies courses or English language and literature courses; or earn an E in any of the following Cambridge advanced or Cambridge advanced subsidiary courses: English language, literature and English, English general paper, psychology, history, sociology, global perspectives and research, (~~or~~) law, classical studies, drama, economics, thinking skills, or geography.

(B) For mathematics, successfully complete one high school credit in any of the following courses with a grade of C+ or higher: Advanced placement courses in statistics, computer science A, computer science principles, precalculus or calculus; any of the international baccalaureate mathematics or computer science courses; or a Cambridge advanced or advanced subsidiary mathematics (~~or~~) further mathematics, or computer science course.

(ii) Score a three or higher on advanced placement exams in one of the English language arts and one of the mathematics courses identified above; score a four or higher on international baccalaureate exams in one of the English language arts and one of the mathematics courses identified above; or score an E or higher on Cambridge international exams in one of the English language arts and one of the mathematics courses identified above.

(e) **SAT or ACT.** Meet or exceed the scores established by the state board of education for the mathematics portion and the reading, English, (~~and~~) and writing portion of the SAT or ACT.

(f) **Performance-based learning experience.** Complete a performance-based learning experience that results in a product created by the student that provides evidence of meeting or exceeding state learning standards in English language arts and mathematics. The

learning experience may take a variety of forms such as a project, practicum, work-related experience, community service, or cultural activity and should permit the student to demonstrate knowledge and skills in a real-world context. "Real-world context" means learning experiences that provide students the opportunity to carry out activities and solve problems in a way that reflects the complex nature of such tasks in the world outside of the classroom. The product may take a variety of forms such as a performance, presentation, portfolio, report, film, or exhibit that allows the student to demonstrate meeting or exceeding English language arts and/or math learning standards.

(i) Prior to offering a performance-based pathway option, the school district board of directors shall adopt a written policy. The policy must address:

(A) Approval of student proposals.

(B) Approval of school or district-developed performance-based pathway options, if the district chooses to provide such options. For a student to use a school or district-developed performance-based pathway option, the student will sign a learning contract with the school or district.

(C) Evaluation of student products. The evaluation of each student's product must be conducted by a certificated teacher with an endorsement in the relevant subject area, or with other applicable qualifications as permitted by the professional educator standards board, or by an evaluation panel that must include at least one teacher with an endorsement in the relevant subject area, or with other applicable qualifications as permitted by the professional educator standards board. The evaluation panel may include external parties such as community leaders or professionals. Districts are encouraged to use a panel of evaluators.

(D) Measures to ensure the safety of the student learning experience, including if appropriate, work-based learning rules, industry safety standards, youth employment regulations, and local risk management practices.

(ii) To complete a performance-based graduation pathway option, a student shall:

(A) Submit a proposal or sign a learning contract. The proposal or learning contract must describe the student learning experience, the product based on the student learning experience that will allow the student to demonstrate meeting or exceeding English language arts and/or math standards. The proposal or learning contract must identify the learning standards in English language arts and/or math that will be addressed, in accordance with performance-based pathway graduation proficiency targets posted on the state board of education web page and may include additional learning standards appropriate for the individual student's performance-based pathway.

(B) Engage in a student learning experience that takes place no earlier than the student's ninth grade year. The student learning experience may take place outside of the school day and outside of the school facility, or it may be incorporated into a school day and into a high school course or courses provided the learning experience reflects a real-world context.

(C) Submit a product created by the student based on the student learning experience that permits the student to demonstrate meeting or exceeding the English language arts and/or math learning standards identified in the student's proposal or learning contract. The product must include a student reflection that minimally identifies the connection between the student's learning and the student's preparation

for their posthigh school goals and includes a student self-evaluation of the skills and learning gained.

(iii) The decision as to whether a student meets the graduation pathway requirement through a performance-based pathway option will be locally determined based on an evaluation of the student's product as a demonstration of meeting English language arts and/or math standards identified in the proposal/learning contract. Districts may collaborate on the evaluation process.

(A) Evaluation of the student's project must be conducted by a certificated teacher endorsed in the relevant subject area, or with other applicable qualifications permitted by the professional educators standards board, or an evaluation panel that must involve at least one certificated teacher endorsed in the relevant subject area, or with other applicable qualifications permitted by the professional educators standards board. The evaluation panel may include external parties such as community leaders or professionals. Districts are encouraged to use a panel of evaluators.

(B) The evaluation to determine whether the student has met the identified state learning standards must be based on rubrics and proficiency targets developed by the state board of education in collaboration with the office of the superintendent of public instruction. The rubrics and proficiency targets will be posted on the state board of education website. As state learning standards are updated under RCW 28A.655.070, the rubrics and proficiency targets will be updated, if needed, within one year.

(g) **Combination.** Meet any combination of at least one English language arts option and at least one mathematics option established in pathway options (a) through ~~((e))~~ (f) of this subsection.

~~((g))~~ (h) **Armed services vocational aptitude battery.**

(i) Meet standard on the armed forces qualification test portion of the armed services vocational aptitude battery by scoring at least the minimum established by the military for eligibility to serve in a branch of the armed services at the time that the student takes the assessment. The state board of education will post eligibility scores at least annually by September 1st. Each student may choose to meet either the posted minimum score the year a student takes the armed services vocational aptitude battery or the score posted by the state board of education on a later date prior to the student turning ~~((twenty-one))~~ 21 years of age.

(ii) The school must inform the students taking the armed services vocational aptitude battery about the minimum eligibility score required by each branch of the military as well as information about eligibility requirements for specific military occupations. Schools are encouraged to schedule an armed services vocational aptitude battery career exploration program interpretation seminar after the test so students can participate in high school and beyond planning and learn about available military and nonmilitary occupations for which they have an aptitude. The state board of education will maintain a web page with information about military occupation requirements and minimum eligibility scores required by each branch of the military.

(iii) Schools that offer the armed services vocational aptitude battery must inform students regarding the ways in which their scores and personal information might be shared, per the agreement between the school and the United States Department of Defense which administers the armed services vocational aptitude battery. Each student must be given prior written notice of the option to decide whether the school can release the student's armed services vocational aptitude

battery scores to military recruiters for contact purposes. A school administrator, teacher, or counselor must also explain and offer this option to the students on the day of the test.

(iv) This pathway does not require students to meet the physical or other requirements for military enlistment, require enlistment, or require students to release their scores to the military for purposes of recruitment.

(v) Satisfying this pathway does not require students to meet the separate English and mathematics graduation pathway requirements of pathway options (a) through ~~((+f+))~~ (g) of this subsection.

~~((+h+))~~ (i) **Career and technical education course sequence.** Complete the curriculum requirements of a core plus program relevant to the student's postsecondary goals outlined in the student's high school and beyond plan as defined in WAC 180-51-220 in aerospace, maritime, health care, information technology, or construction and manufacturing; or complete a sequence of at least two high school credits in career and technical education courses that meet the following criteria:

(i) The sequence is comprised of courses that are technically intensive and rigorous in a progression relevant to the student's postsecondary goals outlined in the student's high school and beyond plan as defined in WAC 180-51-220. Courses to satisfy this pathway must be comprised of either:

(A) Courses within the same career and technical program area; or

(B) A local sequence of courses within more than one career and technical program area if approved by a district's local school board, local board's designee, or the district's local vocational (career and technical education) advisory committee established under RCW 28A.150.500 and submitted to the office of the superintendent of public instruction for an expedited approval. A sequence submitted to the office of superintendent of public instruction for expedited approval will be deemed approved if a decision is not provided to the district within ~~((forty-five))~~ 45 calendar days of submittal. If a sequence is denied approval, the office of superintendent of public instruction must provide the district with a written notification including the reason for denial. Once a local sequence has been approved by the office of superintendent of public instruction, it may be implemented in other districts with notification of implementation to the office of superintendent of public instruction.

(ii) Each sequence of career and technical education courses must be comprised of courses that meet the minimum criteria identified in RCW 28A.700.030. Specifically, the courses must:

(A) ~~((Either))~~ Satisfy either of the following conditions:

(I) Lead to a certificate or credential that is state or nationally recognized by trades, industries, or other professional associations as necessary for employment or advancement in that field; or

(II) Allow students to earn dual credit for high school and college through tech prep (career technical education dual credit), advanced placement, or other agreements or programs.

(B) Be comprised of a sequenced progression of multiple courses that are technically intensive and rigorous; and

(C) Lead to workforce entry, state or nationally approved apprenticeships, or postsecondary education in a related field.

(iii) Satisfying the career technical education pathway does not require a student to take a course that is part of a career and technical education preparatory program that is approved under RCW 28A.700.030 nor does satisfying this pathway require students to meet

the separate English and mathematics graduation pathway requirements of pathway options (a) through ~~((f))~~ (g) of this subsection.

(iv) A course that is used to meet graduation pathway requirements may also be used to meet credit subject area requirements, including career and technical education course equivalencies per RCW 28A.700.070.

[Statutory Authority: RCW 28A.230.090. WSR 20-01-101, § 180-51-230, filed 12/13/19, effective 1/13/20.]

**WSR 23-20-020**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed September 25, 2023, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-10-018.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing amendments to WAC 388-412-0040 Can I get my benefits replaced?

Hearing Location(s): On November 7, 2023, at 10:00 a.m., virtually via [Microsoft] Teams or call in. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than November 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5840, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by November 7, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by October 24, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments are necessary to implement Section 501 of the 2023 Consolidated Appropriations Act, which allows replacement of stolen food benefits for households who are victims of skimming, cloning, or similar fraudulent methods of EBT theft. These amendments are currently in place under emergency rule filed as WSR 23-17-123.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Statute Being Implemented: P.L. 117-328, Title IV, Sec. 501.

Rule is necessary because of federal law, P.L. 117-328, Title IV, Sec. 501.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alexis Miller, P.O. Box 45470, Olympia, WA 98504-5470, 253-579-3144.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

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

Explanation of exemptions: The proposed rules do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

September 25, 2023

Katherine I. Vasquez  
Rules Coordinator

**SHS-4991.6**

AMENDATORY SECTION (Amending WSR 11-19-047, filed 9/13/11, effective 10/14/11)

**WAC 388-412-0040 Can I get my benefits replaced?** Under certain conditions, we may replace your benefits.

(1) You may get either your EBT cash ~~((and/))~~ or food assistance, ~~((benefits))~~ or both replaced if:

(a) We make a mistake that causes you to lose benefits;

(b) The EBT card mailed to you is stolen from the mail ~~((+))~~, you never had the ability to use the benefits ~~((+))~~, and you lost benefits;

(c) You left a drug or alcohol treatment facility on or before the ~~((fifteenth))~~ 15th of the month and the facility does not have enough food assistance benefits in their EBT account for one-half of the allotment that they owe you;

(d) Your EBT benefits that were recently deposited into an inactive EBT account were canceled by mistake; or

(e) The food that your household purchased with food assistance benefits was destroyed in a household disaster or misfortune.

(i) For us to replace your benefits, you must report the loss to the department within ~~((ten))~~ 10 days from the date of the loss.

(ii) We replace the amount of your loss ~~((+))~~ up to a one-month benefit amount.

(iii) There is no limit to the number of replacements for food destroyed in a household misfortune.

(f) Your food benefits were stolen, despite your EBT card being in your possession, via card skimming, cloning, or other similar fraudulent method between October 1, 2022, and September 30, 2024; and

(i) The head of household of your assistance unit submitted a completed and signed claim within 30 days of discovering the loss; and

(ii) You have not already received two replacements in the current federal fiscal year.

(iii) We replace the amount of your loss or the amount of twice your food assistance allotment that was issued immediately prior to the date of the theft, whichever is less.

(iv) Retroactive claims for food assistance stolen between October 1, 2022, and August 22, 2023, must be reported no later than October 22, 2023.

(v) Replacement of benefits stolen via card skimming, cloning, or other similar method is contingent upon federal approval.

(2) We will not replace your benefits ~~((if your loss is for a reason other than those listed in subsection (1) above))~~ if:

(a) We decided that your request is fraudulent or skimming is not validated;

(b) Your ~~((food assistance benefits were))~~ EBT card was lost, stolen, or misplaced except for (1)(b) of this section ~~((after you received them));~~

~~((You already received two replacements for food destroyed in household disaster or misfortune within the last five months))~~ You are

pending an administrative hearing decision regarding a denial of replacement benefits. You have the right to an administrative hearing if your request for replacement benefits is denied; or

(d) You received disaster supplemental nutrition assistance program (D-SNAP) benefits for the same month you requested a replacement for food assistance.

(3) ~~((EBT cards.))~~ It is your responsibility to keep track of your household's EBT card.

(a) If you have multiple EBT cards replaced, we may suspect you to be trafficking benefits as described under WAC 388-412-0046 (2)(d).

(b) If we suspect trafficking, we will refer your case for investigation by the office of fraud and accountability. Persons trafficking in food assistance benefits may be subject to fines, disqualification from food assistance, and legal action including criminal prosecution.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-412-0040, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 09-21-009, § 388-412-0040, filed 10/8/09, effective 11/15/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. WSR 08-14-047, § 388-412-0040, filed 6/24/08, effective 7/25/08; WSR 03-22-038, § 388-412-0040, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. WSR 01-18-054, § 388-412-0040, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-412-0040, filed 7/31/98, effective 9/1/98.]



## WSR 23-20-026

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed September 25, 2023, 2:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-08-021.

Title of Rule and Other Identifying Information: Chiropractic X-ray technician course requirements, continuing education (CE), and expired status. The chiropractic quality assurance commission (commission) is proposing changes to WAC 246-808-201, 246-808-203, 246-808-205, 246-808-207, 246-808-209 and 246-808-211; and repealing WAC 246-808-215. The commission is proposing changes to rules concerning chiropractic X-ray technician's course requirements including who can instruct the course and updating the requirements for obtaining, maintaining, and returning from expired status. The commission is also adopting health equity CE requirements to reflect requirements in ESSB 5229 (chapter 276, Laws of 2021).

Hearing Location(s): On November 16, 2023, at 9:20 a.m., at the Department of Labor and Industries, 7273 Linderson Way S.W., Room S117 and S118, Tumwater, WA 98501; or virtually via Microsoft Teams. Join on your computer, mobile app, or room device [Date of Intended Adoption: November 16, 2023.](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_NzQxNGVhYWUtNTVmMi00MTQ3LTkzYTctNTM0Y2FhMzUzMzRk%2540thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522842fd80d-c544-49c8-bc06-392ac3b3c17b%2522%257d&data=05%7C01%7Cbetty.moe%40doh.wa.gov%7Cfd01a7de72324a1293dd08db8940d992%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638254683846134818%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C&sdata=PLVQbzoCvlsUuP8%2B1U1kt6xmtVkwxPEqCIEB32rn9cg%3D&reserved=0, Meeting ID 218 722 037 266, Passcode XAEB2a; or call in (audio only), +1 564-999-2000,,789373614# United States, Olympia, Phone Conference ID 789 373 614#.</p></div><div data-bbox=)

Submit Written Comments to: Betty J. Moe, Regulatory Analyst, P.O. Box 47858, Olympia, WA 98504-7858, email [Betty.Moe@doh.wa.gov](mailto:Betty.Moe@doh.wa.gov), [CQAC@doh.wa.gov](mailto:CQAC@doh.wa.gov), by November 7, 2023.

Assistance for Persons with Disabilities: Contact Betty J. Moe, phone 360-236-2868, TTY 711, email [CQAC@doh.wa.gov](mailto:CQAC@doh.wa.gov), by November 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing changes in chapter 246-808 WAC pertaining to chiropractic X-ray technicians. The purpose of the commission under RCW 18.25.0151 is to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing qualifications for credentialing, consistent standards of practice, continuing competency mechanisms, and discipline, and those rules, policies, and procedures developed by the commission must promote the delivery of quality health care to the residents of the state.

As part of these revisions, the commission is proposing updates to the qualification to obtain, maintain, and return from expired status for chiropractic X-ray technicians.

Reasons Supporting Proposal: RCW 43.70.041 requires the commission to review its administrative rules every five years to ensure that regulations are current and relevant.

RCW 18.25.005 provides that the commission's purpose is to regulate the competency and quality of professional health care providers under their jurisdiction by establishing, monitoring, and enforcing qualifications for licensing, consistent standards of practice, continuing competency mechanisms, and discipline.

The rules meet all stated intents by implementing statutory requirements and updating other sections based on needs identified during the required five-year review.

Statutory Authority for Adoption: RCW 18.25.180 and 43.70.613.

Statute Being Implemented: RCW 18.25.180 and 43.70.613.

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

Name of Proponent: Chiropractic quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Betty J. Moe, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2868.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Betty J. Moe, P.O. Box 47858, Olympia, WA 98504-7858, phone 360-236-2868, TTY 711, email Betty.Moe@doh.wa.gov, CQAC@doh.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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

#### Small Business Economic Impact Statement

**Summary:** Yes, the estimated costs of the proposed rule ranging between \$2,500 and \$25,500 are more than the minor cost threshold of \$1,034.68; however, the commission and department have no reason to believe that there will be a disproportionate impact to small businesses as compared to large businesses.

**A brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

**Brief description of the proposed rule including the current situation/rule.** The commission is considering revisions to chapter 246-808 WAC pertaining to chiropractic X-ray technicians. As part of these revisions, the commission is proposing:

- Housekeeping throughout the sections.
- Providing definitions for "classroom hour" as well as "in-person," WAC 246-808-203.
- Clarifying that a chiropractor may employ another chiropractor to operate X-ray equipment, WAC 246-808-205(1).
- Increasing the number of initial training hours from 48 hours of in-person training to 72 hours of classroom instruction, 30 of which must be completed in-person, WAC 246-808-205 (2)(c).

- Expanding the examination to be both a written and practical proficiency examination, rather than just written, and reducing the passing grade to 70 percent from the existing requirement of 75 percent, WAC 246-808-205 (2)(d).
- Exempting the 72-hour course requirement and examination if the applicant has completed chiropractic college within the past five years since they have exceeded the educational requirements for the credential, WAC 246-808-205(3).
- Removing physiology from the course content requirements and adding that the training course include reference to the requirements in WAC 246-808-565,<sup>1</sup> which are the commission rules related to radiographic standards, WAC 246-808-207.
- Expanding who can provide training, WAC 246-808-207 [(1)](c).
- Clarifying when the first CE period is due, WAC 246-808-209.
- Adopting the health equity CE model rules from WAC 246-12-800 through 246-12-830, for chiropractic X-ray technicians to comply with RCW 43.70.631, requiring two hours every four years without increasing the total number of required CE hours, WAC 246-808-209(3).
- Providing clarity about what is required to renew an expired chiropractic X-ray technician, WAC 246-808-211.
- Proposing additional training requirements for chiropractic X-ray technicians who have allowed their credential to expire for five years or longer, WAC 246-808-211.

**History of the rule:** The commission has been regulating chiropractic X-ray technicians since 1996, and only minimal changes have been made to the requirements for this profession. The commission initially began revisiting these rules under WSR 16-21-080 on October 18, 2016, and held various rules review workshops from 2016-2019. The rules process was briefly halted by the coronavirus disease 2019 (COVID-19) public health emergency.

The commission began revisiting these rules and created the chiropractic X-ray technician committee which met October 10, 2021, December 9, 2021, and February 2, 2022, and presented draft rule language to the commission on March 10, 2022.

The commission determined to refile a new CR-101 on March 24, 2023, as WSR 23-08-021 to incorporate new legislation and direction. Draft rule language was presented to the commission for review on May 18, 2023, and July 13, 2023. The commission also held a public meeting on June 8, 2023, to specifically focus on this rule set.

**Why are the proposed rules needed?** The commission is proposing revisions to these rules for several reasons:

- The rule has not been updated since 1998. The current rules as drafted do not provide enough information related to renewal of an expired credential and need to be redrafted to meet current rule drafting requirements.
- The commission believes it is important to revisit the course requirements for a chiropractic X-ray technician credentialing, including the number of hours of training required and how the course is delivered. On November 12, 2020, due to the potential threat posed by COVID-19, the commission determined in a policy statement that all course requirements could be completed virtually<sup>2</sup>. After much evaluation and discussion, the commission has determined that part (42 hours) of the course could be delivered using virtual instruction, and 30 hours must be delivered "in-

person," and the commission has proposed definitions for both terms.

- Since the chiropractic X-ray technician was created, there have only been two instructors approved by the commission. Both are in the general Seattle area. Allowing more virtual hours will allow students across the state additional access to training courses.
- The commission believes expanding the qualifications of the course instructors will allow additional instructors to be approved while maintaining the integrity of the training.
- The existing rule did not specify that a chiropractor may also employ another chiropractor to operate X-ray equipment though X-rays are within the scope of practice.
- The commission does not believe that requiring physiology is required for chiropractic X-ray technicians<sup>3</sup> as stated in the existing rule. It does not relate to the X-rays taken by chiropractic X-ray technicians.
- The commission believes it is important that chiropractic X-ray technicians learn radiographic standards as required by WAC 246-808-565.
- The chiropractic X-ray technician is a hands-on profession. Adding the practical proficiency examination is an additional way to ensure safe X-rays and increase patient safety. Likewise, clarifying if an applicant fails the examination a third or subsequent time, they are required to take an additional 16-hour course before taking the examination again to assure [ensure] safety.
- The education a chiropractor obtains while in chiropractic school is far greater than the requirements necessary to obtain the chiropractic X-ray technician credential. This is to acknowledge that chiropractors are qualified to operate X-ray equipment without further registration or training. On February 11, 2016, the commission issued an interim policy on license renewal continuing education attestation requirements for chiropractors and chiropractic X-ray technicians<sup>4</sup>. Putting language into rule is the most clear and consistent way to enforce the CE requirements. Similar language has already been added into the chiropractic CE rules (WAC 246-808-150).
- The health equity CE model rules, WAC 246-12-800 through 246-12-830, adopted in November 2022, create four new sections of rule and implement RCW 43.70.613. The health equity CE model rules require completion of two hours of health equity CE every four years for all health professionals credentialed under RCW 18.130.040 with a CE requirement, which applies to chiropractic X-ray technicians. The health equity CE model rules also require that the two CE hours include implicit bias training to identify strategies to reduce bias during assessment and diagnosis. Rule-making authorities for each profession may create standards that meet or exceed the minimum standards in the model rules.
- There is very little information about renewing a chiropractic X-ray technician when the credential has expired in existing rule. The proposed rules refer a provider to chapter 246-12 WAC for additional clarification and provide clarity within the commission rules without imposing additional requirements on the providers.

If a chiropractic X-ray technician has been out of practice (expired) for five years or more, it is important for them to take the initial course again. The potential impacts of inadequate radiographic training are of concern. Adding the practical proficiency examination

is an additional way to ensure safe X-rays and increase patient safety.

**Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS).**

**Table 1. Summary of Businesses Required to Comply with the Proposed Rule**

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	Number of Businesses In Washington State	Minor Cost Threshold
611430	Professional and Management Development Training	394	\$1,034.68

**Analysis of probable costs of businesses in the industry to comply with the proposed rule, including the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue.** Most of the proposed costs to comply with the rule only apply to the applicant themselves; however, there are a few costs to businesses that provide the training course that is regulated under this rule. The following proposed rule sections have been selected for this analysis as they impact businesses:

**New WAC 246-808-205 Registration of chiropractic X-ray technicians:**

**Description:** The commission has moved language from WAC 246-808-215 (1), (2), and (3) to this new section and is proposing amendments to the language that may affect businesses:

**WAC 246-809-205 (2) (c)** moves language from WAC 246-808-215 (2) (a) and amends the number of hours completed and how the course hours can be completed. The proposed rules increase the number of hours of education required to obtain a chiropractic X-ray technician credential from 48 to 72 hours.

During the COVID-19 emergency, the commission began allowing virtual course hours and is now proposing in rule a required 72 hours of training (as opposed to 48 hours in current rule) which is an increase of 24 hours. In addition, the proposed rule adds that 30 of the 72 required hours has to be completed in person, while the remainder of the hours (up to 42 hours) can be completed online using online tools and resources. This is an in-person reduction of hours from 48 to 42 hours, reducing by 6 hours.

**WAC 246-808-205 (2) (d)** moves language from WAC 246-808-215 (2) (b) and amends the type of examination to add a practical exam. The proposed amendments also clarify situations where an applicant must re-take the exam.

**Costs:** The commission is proposing an amendment that requires 72 hours of course training (as opposed to 48 hours in current rule) which is an increase of 24 hours. In practice, the training course is currently presented by two approved instructors over four weekends, on both Saturday and Sunday. However, with the changes the commission has made to the proposed rule, the providers of the course will begin offering the in-person portion of the course over two weekends, on both Saturday and Sunday.

*Cost for instructors:*

Costs to update training: These costs are analyzed below (in section 3, new WAC 246-808-207 Course requirements and approval).

Physical Space: Due to the reduction of in-person hours the commission and department estimate that there could be a potential cost savings or opportunity cost savings from the reduction of in-person hours, due to not needing an in-person space for instruction. Existing programs already have been delivering instruction particularly online so the commission and department do not anticipate any additional costs for online tools and resources.

*Other cost considerations:*

Software Costs: The commission and department do not anticipate any additional costs for online tools and resources because existing programs have been delivering instruction in the short term due to the COVID-19 public health emergency. However, the commission and department recognize that there is an ongoing cost to maintain existing software to deliver online instruction (e.g., Zoom is \$199/year). While other software may be used by instructors, the commission and department anticipate that software is currently already being used and not an added cost to instructors.

The commission and department anticipate any additional costs incurred to add a practical component to the examination would be included in the cost of the course.

**New WAC 246-808-207 Course requirements and approval:**

**Description:** The proposed new rule moves language from **WAC 246-808-215(4)** and amends it in the following ways that potentially affect businesses: Removes the requirement under subsection (5)(4)(a)(iv) that the course requires physiology, and adds that any educational programs approved include reference to WAC 246-808-565 Radiographic standards.<sup>5</sup>

**Costs:** The commission and the department anticipate there are additional costs for existing course providers to update course materials. The commission and department estimate the total time to implement the course changes (for one training and examination) in compliance with the proposed rule will take between 10 and [no information supplied by agency] hours at the estimated hourly instructor salary ranging between \$250 - \$300, resulting in an estimated one-time cost ranging between \$2,500 to \$25,500.<sup>6</sup>

The commission and department do not anticipate that compliance with the proposed rule will cause businesses in the industry to lose sales or revenue. The commission and department do acknowledge potential impacts to current businesses who provide these services; however, the commission and department do not have any reason to believe that the proposed rules will impose any additional impact to business in comparison to existing rules.

**Summary of probable cost(s) to businesses.**

**Table 2. Summary of probable costs**

<b>WAC Section and Title</b>	<b>Probable Cost(s)</b>
WAC 246-808-205 Registration of chiropractic X-ray technicians	<b>Cost to Instructor:</b> Time to update training is analyzed in WAC 246-808-207. Potential cost savings or opportunity cost savings from reduction in physical space due to proposed additional online hours.
WAC 246-808-207 Course requirements and approval	<b>Cost to Instructor:</b> Time to update training estimated one-time cost of \$2,500 to \$25,500. Potential cost savings or opportunity cost savings from reduction in physical space due to proposed additional online hours analyzed in WAC 246-808-205.

**Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated.** Yes, the estimated costs of the proposed rule ranging between \$2,500 and \$25,500 are **more than** the minor cost threshold of \$1,034.68.

**Summary of how the costs were calculated.** The costs were collected under consultation and by the commission and department aimed to consider costs of compliance with the proposed rule for the two businesses that currently provide training. The estimated cost to businesses of \$2,500 and \$25,500 does not consider any potential cost savings that could be realized from the reduction of in-person classroom hours.

**Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.** No, we believe the proposed rule does not have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

**Explanation of the determination.** The commission and department do not anticipate a disproportionate impact on small businesses as compared to large businesses. Currently, there are only two businesses that provide training and the commission and department have no reason to believe that they will not incur the same costs to comply with the composed [proposed] rule.

1 WAC 246-808-565.

2 Chiropractic X-Ray Technicians and Classroom Hours <https://doh.wa.gov/sites/default/files/legacy/Documents/2300/2021/TempGuideChiroX-rayTechsClassroomHours.pdf?uid=647128e3acf7c>.

3 Physiology is a branch of biology that deals with the functions and activities of life or living matter (such as organs, tissues, or cells) and the physical and chemical phenomena involved. Physiology Definition & Meaning - Merriam-Webster <https://www.merriam-webster.com/dictionary/physiology>.

4 <https://doh.wa.gov/sites/default/files/legacy/Documents/2300/2-11-16.pdf?uid=643dc01d705f6>.

5 WAC 246-808-565: <https://app.leg.wa.gov/WAC/default.aspx?cite=246-808-565>.

6 Estimates produced in consultation.

A copy of the statement may be obtained by contacting Betty J. Moe, P.O. Box 47858, Olympia, WA 98504-7858, phone 360-236-2868, TTY 711, email [Betty.Moe@doh.wa.gov](mailto:Betty.Moe@doh.wa.gov), [CQAC@doh.wa.gov](mailto:CQAC@doh.wa.gov).

September 21, 2023  
Robert J. Nicoloff  
Executive Director

### OTS-4694.3

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

**WAC 246-808-201 Purpose.** The purpose of WAC 246-808-201 through ((246-808-215)) 246-808-211 is to establish eligibility ((eriterion)) criteria for registration of chiropractic X-ray technicians as allowed under RCW 18.25.180.

[Statutory Authority: Chapter 18.25 RCW. WSR 96-16-074, § 246-808-201, filed 8/6/96, effective 9/6/96.]

NEW SECTION

**WAC 246-808-203 Definitions.** The definitions in this section apply to WAC 246-808-201 through 246-808-211, unless the context clearly requires otherwise:

- (1) "Classroom hour" means 50 minutes of instruction.
- (2) "In-person learning" means real-time instruction where all of the instructor(s) and student(s) meet in the same physical space.

[]

NEW SECTION

**WAC 246-808-205 Registration of chiropractic X-ray technicians.**

(1) A licensed chiropractor shall employ only chiropractors or chiropractic X-ray technicians to operate X-ray equipment.

(2) To apply for registration as a chiropractic X-ray technician, the applicant shall submit:

- (a) A completed application on forms provided by the commission;
- (b) Applicable fees as required in WAC 246-808-990;
- (c) Proof of satisfactory completion of a course of instruction of not less than 72 classroom hours, 30 of which are in-person learning. The course must have been approved by the commission in accordance with WAC 246-808-207; and

(d) Verification of passing a written and practical proficiency examination in radiologic technology, approved by the commission in accordance with WAC 246-808-207. A passing grade shall be 70 percent.

(i) If the applicant fails their first attempt at the written and practical proficiency examination, the applicant may take the examination one additional time without additional classroom instruction.

(ii) If the applicant fails their second and any subsequent attempt at the written and practical proficiency examination, the applicant shall complete an additional course of instruction of not less than 16 hours prior to retaking the examination.

(3) Exceptions allowing registration without meeting the requirements of subsection (2)(c) and (d) of this section.

(a) A chiropractic X-ray technician applicant who holds a current active registration, license, or certification from a national certifying agency or other governmental licensing agency whose standards for registration, licensure, or certification are equal to or exceed the standards under these rules.

(b) A person who has graduated from an accredited and commission approved chiropractic school or college within five years prior to submitting their application.

[]



NEW SECTION

**WAC 246-808-207 Course requirements and approval.** (1) A person may request commission approval of a course of classroom instruction for chiropractic X-ray technicians by submitting the following information to the commission:

- (a) An outline of the course of instruction, which shall include:
  - (i) Physics and equipment;
  - (ii) Principles of radiographic exposure;
  - (iii) Radiation protection;
  - (iv) Anatomy;
  - (v) Radiographic positioning and procedures; and
  - (vi) Topics that address the requirements listed in WAC 246-808-565.
- (b) A written and practical proficiency examination.
- (c) A qualified instructor. A qualified instructor must verify during the preceding five years that their license has not been suspended, revoked, or otherwise conditioned or restricted and:
  - (i) Be a diplomate of the American Chiropractic Board of Radiology;
  - (ii) A chiropractor who has been licensed for five years, with at least five years in practice that includes the taking of X-rays; or
  - (iii) A chiropractor who has on-campus or postgraduate faculty status in the field of radiology.
- (d) Any other information deemed necessary by the commission to make a determination.

(2) All information submitted pursuant to this section must be consistent with chapters 18.25 RCW and 246-808 WAC and must cover all aspects of the chiropractic scope of practice as it pertains to X-rays.

[ ]

NEW SECTION

**WAC 246-808-209 Continuing education for chiropractic X-ray technicians.** (1) A chiropractic X-ray technician shall complete six hours of continuing education in compliance with WAC 246-12-170 through 246-12-240. Verification of completion of the continuing education requirement is due upon renewal. If the first renewal period is less than one full year from the date of licensure, no continuing education will be due for the first renewal period.

(2) The commission approves continuing education of the subject matter listed in WAC 246-808-207 (1)(a). Prior approval of continuing education programs is not required by the commission.

(3) Health equity requirements.

(a) Beginning July 1, 2024, as part of the continuing education requirements, a chiropractic X-ray technician must complete a minimum of two hours of training in health equity every four years in accordance with WAC 246-12-800 through 246-12-830.

(b) Hours spent completing health equity continuing education under this section count toward meeting the continuing education requirements for chiropractic X-ray technicians for renewal.

[ ]

NEW SECTION

**WAC 246-808-211 Expired credential—Requirements for reactivating a chiropractic X-ray technician.** If a chiropractic X-ray technician registration is expired, to return to active status, the chiropractic X-ray technician must meet the requirements of WAC 246-12-040 and comply with the following:

(1) If the chiropractic X-ray technician registration has been expired for less than one year, the chiropractic X-ray technician must submit to the commission a written attestation of completing at least six hours of continuing education within the last 12 months in any of the categories listed in accordance with WAC 246-808-207 (1) (a), and meet the requirements as listed in WAC 246-12-040 (3) (a).

(2) If the chiropractic X-ray technician registration has been expired for one year or more, but less than three years, the chiropractic X-ray technician must complete at least 12 hours of continuing education in the two years prior to the date of application in any of the categories listed in accordance with WAC 246-808-207 (1) (a), and meet the requirements as listed in WAC 246-12-040 (3) (b).

(3) If the chiropractic X-ray technician registration has been expired for three years, but less than five years, the chiropractic X-ray technician must complete at least 12 hours of continuing education in the two years prior to the date of application in any of the categories listed in accordance with WAC 246-808-207 (1) (a), and meet the requirements as listed in WAC 246-12-040 (3) (c).

(4) If the chiropractic X-ray technician registration has been expired for five years or more, the chiropractic X-ray technician must meet the course requirements and pass the written and practical proficiency examination as described in WAC 246-808-207 less than one year prior to the date the application was received and meet the requirements as listed in WAC 246-12-040 (3) (c), excluding (c) (ix).

[ ]

**WSR 23-20-038**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed September 27, 2023, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-026.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing amendments to WAC 388-447-0120 How does alcohol or drug dependence affect my eligibility for referral to the housing and essential needs (HEN) program? and 388-449-0220 How does alcohol or drug dependence affect my eligibility for the ABD cash and pregnant women assistance programs?

Hearing Location(s): On November 7, 2023, at 10:00 a.m., virtually via [Microsoft] Teams or call in. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than November 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by November 7, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by October 24, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments implement provisions of ESHB 1260 (chapter 289, Laws of 2023) that expand circumstances where good cause for failing to participate in substance use disorder assessment or treatment as a condition of eligibility must be found for the aged, blind, or disabled (ABD), HEN referral, and pregnant women assistance (PWA) programs. These amendments are in effect as of July 23, 2023, under emergency rule filed as WSR 23-16-002.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, and 74.62.030.

Statute Being Implemented: RCW 74.04.805 and 74.62.005.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Mintzer, P.O. Box 45470, Olympia, WA 98504-5770, 360-764-0050.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

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

Explanation of exemptions: The proposed rules do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:  
Is fully exempt.

September 22, 2023  
Katherine I. Vasquez  
Rules Coordinator

### SHS-4982.3

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-447-0120 How does ~~((alcohol or drug dependence))~~ substance use affect my eligibility for referral to the housing and essential needs (HEN) program?** (1) ~~((When we have information that indicates you may be chemically dependent,))~~ You must complete a ~~((chemical dependency))~~ substance use disorder assessment ~~((unless you have good cause to not do so))~~ when we have information that indicates you may have a substance use disorder.

(2) You must participate in ~~((drug or alcohol))~~ substance use treatment if a certified ~~((chemical dependency))~~ substance use disorder professional indicates a need for treatment, unless you have good cause ~~((to not do so))~~. Good cause includes, but is not limited to, ~~((3) We consider))~~ the following reasons ~~((to be good cause for not following through with a chemical dependency assessment or treatment))~~:

(a) We determine that your physical or mental health impairment prevents you from participating in treatment ~~((+))~~.

(b) The outpatient ~~((chemical dependency))~~ substance use disorder treatment you need isn't available in the county where you live ~~((+ or))~~.

(c) The inpatient ~~((chemical dependency))~~ substance use disorder treatment you need isn't available at a location you can reasonably access.

(d) You are a parent or other relative personally providing care for a minor child or an incapacitated individual living in your household, child care or day care is necessary for you to participate in substance use disorder treatment, and such care is not available.

~~((4))~~ (3) If you refuse or ~~((fail to))~~ do not complete an assessment or treatment without good cause, your HEN referral eligibility will end ~~((following advance notification rules under WAC 388-458-0030))~~ until you provide proof you are pursuing an assessment or treatment as required.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0120, filed 11/26/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-449-0220 How does ~~((alcohol or drug dependence))~~ substance use affect my eligibility for the aged, blind, or disabled (ABD) cash and pregnant women assistance (PWA) programs? (1) ~~((You))~~ For purposes of ABD, you must complete a ~~((chemical dependency))~~ substance use disorder assessment when we have information that indicates you may ~~((be chemically dependent))~~ have a substance use disorder.**

(2) For purposes of PWA, you must complete a substance use disorder assessment when we have information that indicates you may have a substance use disorder.

~~((2))~~ (3) You must ~~((accept an assessment referral and))~~ participate in ~~((drug or alcohol))~~ substance use disorder treatment if a certified ~~((chemical dependency counselor))~~ substance use disorder professional indicates a need for treatment, unless you ~~((meet one of))~~ have good cause. Good cause includes, but is not limited to, the following ~~((good cause))~~ reasons:

(a) We determine that your physical or mental health impairment prevents you from participating in treatment.

(b) The outpatient ~~((chemical dependency))~~ substance use disorder treatment you need isn't available in the county you live in.

(c) You need inpatient ~~((chemical dependency))~~ substance use disorder treatment at a location that you can't reasonably access.

(d) You are a parent or other relative personally providing care for a minor child or an incapacitated individual living in your household, child care or day care is necessary for you to participate in substance use disorder treatment, and such care is not available.

(3) If you refuse or ~~((fail to))~~ do not complete an assessment or treatment without good cause, your benefits will end until you provide proof you are pursuing an assessment or treatment as required.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-449-0220, filed 4/27/12, effective 6/1/12.]

## WSR 23-20-047

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 27, 2023, 4:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-097 and 23-07-015.

Title of Rule and Other Identifying Information: WAC 182-531-0150 Noncovered physician-related and health care professional services— General and administrative and 182-531-0950 Office and other outpatient physician-related services.

Hearing Location(s): On November 7, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_EICEeDr8Q0ap3784rr7LVQ](https://us02web.zoom.us/webinar/register/WN_EICEeDr8Q0ap3784rr7LVQ). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: November 8, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by November 7, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by October 27, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending these rules to align with Section 11405 of the Inflation Reduction Act of 2022 (P.L. 117-169), which requires states to cover approved adult vaccines recommended by the Advisory Committee on Immunization Practices (ACIP). HCA is also making revisions to add clarity and provide more detail on program requirements for how fee-for-service drugs must be billed to HCA for providers subject to the 340B program requirements.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, P.L. 117-169.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Korrina Dalke, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-2005.

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

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

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: The Inflation Reduction Act of 2022, P.L. 117-169; failure to align with the requirement to

cover ACIP recommended vaccines may result in the loss of the agency's federal medicaid funding.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: Revisions related to fee-for-service drug billing are for clarification and are not exempt under section 1.

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

September 27, 2023

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 22-07-105, filed 3/23/22, effective 4/23/22)

**WAC 182-531-0150 Noncovered physician-related and health care professional services—General and administrative.** (1) The medicaid agency evaluates a request for noncovered services in this chapter under WAC 182-501-0160. In addition to noncovered services found in WAC 182-501-0070, except as provided in subsection (2) of this section, the agency does not cover:

- (a) Acupuncture, massage, or massage therapy;
- (b) Any service specifically excluded by statute;
- (c) Care, testing, or treatment of infertility or sexual dysfunction. This includes procedures for donor ovum, donor sperm, gestational carrier, and reversal of vasectomy or tubal ligation;
- (d) Hysterectomy performed solely for the purpose of sterilization;
- (e) Cosmetic treatment or surgery, except as provided in WAC 182-531-0100 (4) (x);
- (f) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-501-0165;
- (g) Hair transplantation;
- (h) Marital counseling or sex therapy;
- (i) More costly services when the medicaid agency determines that less costly, equally effective services are available;
- (j) Vision-related services as follows:
  - (i) Services for cosmetic purposes only;
  - (ii) Group vision screening for eyeglasses; and
  - (iii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery((-));
- (k) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 182-531-1750;

(l) Physician-supplied medication, except those drugs which the client cannot self-administer and therefore are administered by the physician in the physician's office;

(m) Physical examinations or routine checkups, except as provided in WAC 182-531-0100;

(n) Foot care, unless the client meets criteria and conditions outlined in WAC 182-531-1300, as follows:

(i) Routine foot care including, but not limited to:

(A) Treatment of tinea pedis;

(B) Cutting or removing warts, corns and calluses; and

(C) Trimming, cutting, clipping, or debriding of nails.

(ii) Nonroutine foot care including, but not limited to, treatment of:

(A) Flat feet;

(B) High arches (cavus foot);

(C) Onychomycosis;

(D) Bunions and tailor's bunion (hallux valgus);

(E) Hallux malleus;

(F) Equinus deformity of foot, acquired;

(G) Cavovarus deformity, acquired;

(H) Adult acquired flatfoot (metatarsus adductus or pes planus);

(I) Hallux limitus.

(iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;

(o) Except as provided in WAC 182-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services;

(p) Nonmedical equipment;

(q) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas; and

(r) ~~((Vaccines recommended or required for the sole purpose of international travel. This does not include routine vaccines administered according to current centers for disease control (CDC) advisory committee on immunization practices (ACIP) immunization schedule for adults and children in the United States; and~~

~~(s))~~ Early elective deliveries as defined in WAC 182-500-0030.

(2) The medicaid agency covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

(a) The EPSDT program;

(b) A Washington apple health program for qualified **medicare** beneficiaries (QMBs); or

(c) A waiver program.

[]

AMENDATORY SECTION (Amending WSR 17-21-040, filed 10/12/17, effective 11/12/17)

**WAC 182-531-0950 Office and other outpatient physician-related services.** (1) The medicaid agency pays eligible providers for the following:

(a) Two calls per month for routine medical conditions for a client residing in a nursing facility; and



(b) One call per noninstitutionalized client, per day, for an individual physician, except for valid call-backs to the emergency room per WAC 182-531-0500.

(2) The provider must provide justification based on medical necessity at the time of billing for visits in excess of subsection (1) of this section and follow the requirements in WAC 182-501-0169.

(3) See the agency's physician-related services/health care professional services billing instructions for procedures that are included in the office call and that cannot be billed separately.

(4) Using selected diagnosis codes, the agency reimburses the provider at the appropriate level of physician office call for history and physical procedures in conjunction with dental surgery services performed in an outpatient setting.

(5) The agency may reimburse providers for injection procedures and/or injectable drug products only when:

(a) The injectable drug is administered during an office visit; and

(b) The injectable drug used is from office stock and which was purchased by the provider from a pharmacy, drug manufacturer, or drug wholesaler.

(6) The agency does not reimburse a prescribing provider for a drug when a pharmacist dispenses the drug.

(7) The agency does not reimburse the prescribing provider for an immunization when the immunization material is received from the department of health; the agency does reimburse an administrative fee.

(8) The agency reimburses immunizations as follows:

(a) For immunizations that are not part of the vaccines for children program through the department of health, the agency reimburses for the immunization:

(i) At the medicare Part B drug file price; or

(ii) When a medicare Part B price is not available, the agency uses the (~~point-of-sale~~) actual acquisition cost ((POS)) AAC) rate effective July 1st of each year; or

(iii) Invoice cost.

(b) The agency reimburses a separate administration fee for these immunizations.

(c) Covered immunizations are listed in the professional administered drugs (~~and physician related/professional services~~) fee schedule((s)).

~~((d) Refer to WAC 182-531-0150 (1)(r) for vaccines recommended or required for the sole purpose of international travel.))~~

(9) The agency reimburses therapeutic and diagnostic injections subject to certain limitations as follows:

(a) The agency does not pay separately for the administration of intra-arterial and intravenous therapeutic or diagnostic injections provided in conjunction with intravenous infusion therapy services. The agency does pay separately for the administration of these injections when they are provided on the same day as an E&M service. The agency does not pay separately an administrative fee for injectables when both E&M and infusion therapy services are provided on the same day. The agency reimburses separately for the drug(s).

(b) The agency does not pay separately for subcutaneous or intramuscular administration of antibiotic injections provided on the same day as an E&M service. If the injection is the only service provided, the agency pays an administrative fee. The agency reimburses separately for the drug.

(c) The agency reimburses injectable drugs at actual acquisition cost. The provider must document the name, strength, and dosage of the drug and retain that information in the client's file. The provider must provide an invoice when requested by the agency. This subsection does not apply to drugs used for chemotherapy; see subsection (11) in this section for chemotherapy drugs.

(d) The provider must submit a manufacturer's invoice to document the name, strength, and dosage on the claim form when billing the agency for the following drugs:

(i) Classified drugs where the billed charge to the agency is over (~~one thousand, one hundred dollars~~) \$1,100; and

(ii) Unclassified drugs where the billed charge to the agency is over (~~one hundred dollars~~) \$100. This does not apply to unclassified antineoplastic drugs.

(10) The agency reimburses allergen immunotherapy only as follows:

(a) Antigen/antigen preparation codes are reimbursed per dose.

(b) When a single client is expected to use all the doses in a multiple dose vial, the provider may bill the total number of doses in the vial at the time the first dose from the vial is used. When remaining doses of a multiple dose vial are injected at subsequent times, the agency reimburses the injection service (administration fee) only.

(c) When a multiple dose vial is used for more than one client, the provider must bill the total number of doses provided to each client out of the multiple dose vial.

(d) The agency covers the antigen, the antigen preparation, and an administration fee.

(e) The agency reimburses a provider separately for an E&M service if there is a diagnosis for conditions unrelated to allergen immunotherapy.

(f) The agency reimburses for **RAST** testing when the physician has written documentation in the client's record indicating that previous skin testing failed and was negative.

(11) The agency reimburses for chemotherapy drugs:

(a) Administered in the physician's office only when:

(i) The physician personally supervises the E&M services furnished by office medical staff; and

(ii) The medical record reflects the physician's active participation in or management of course of treatment.

(b) At established maximum allowable fees that are based on medicare Part B pricing, or ((POS)) AAC, maximum allowable cost (MAC), or invoice cost;

(c) For unclassified antineoplastic drugs, the provider must submit the following information on the claim form:

(i) The name of the drug used;

(ii) The dosage and strength used; and

(iii) The National Drug Code (NDC).

(12) Notwithstanding the provisions of this section, the agency reserves the option of determining drug pricing for any particular drug based on the best evidence available to the agency, or other good and sufficient reasons (e.g., fairness/equity, budget), regarding the actual acquisition cost, after discounts and promotions, paid by typical providers nationally or in Washington state.

(13) The agency may request an invoice as necessary.

[]

## WSR 23-20-051

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed September 28, 2023, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-12-049 and 23-14-092.

Title of Rule and Other Identifying Information: WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs, 182-504-0035 Washington apple health—Renewals, and 182-505-0210 Eligibility for children.

Hearing Location(s): On November 7, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_EICEeDr8Q0ap3784rr7LVQ](https://us02web.zoom.us/webinar/register/WN_EICEeDr8Q0ap3784rr7LVQ). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not earlier than November 8, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by November 7, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by October 27, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-504-0035 to allow for telephonic eligibility renewals. HCA is amending WAC 182-504-0015, 182-504-0035, and 182-505-0210 to provide continuous enrollment in medicaid through age five for certain children.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; section 211(36), chapter 475, Laws of 2023 (ESSB 5187).

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Shaunie Long, P.O. Box 42722, Olympia, WA 98504-2716 [2722], 360-725-1343.

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

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules pertain to client program eligibility and do not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

September 28, 2023

## OTS-4720.4

AMENDATORY SECTION (Amending WSR 22-21-072, filed 10/13/22, effective 11/13/22)

**WAC 182-504-0015 Washington apple health—Certification periods for categorically needy programs.** (1) A certification period is the period of time we determine that you are eligible for a categorically needy (CN) Washington apple health program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues through the end of the last month of the certification period.

(2) ~~((For a))~~ Newborn ~~((eligible for apple health, the certification period))~~ coverage begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) If you are eligible for apple health based on pregnancy, the certification period continues through the last day of the month the pregnancy ends. After-pregnancy coverage begins the first day of the month, following the end of the pregnancy, and ends the last day of the 12th month from the time after-pregnancy coverage began.

(4) If you are newly eligible for apple health coverage and had a pregnancy end within the last 12 months, your certification period for after-pregnancy coverage:

(a) Begins the first day of the month you are eligible; and

(b) Ends the last day of the 12th month following the end of your pregnancy.

(5) If you are eligible for the refugee program, the certification period ends at the end of the 12th month following your date of entry to the United States.

(6) If you are a child under age six receiving apple health for kids without a premium, your coverage ends the last day of the month of your sixth birthday.

(7) If you are eligible for newborn coverage, your coverage continues through the last day of the month of your first birthday. Apple health for kids coverage begins automatically on the first day of the month after your newborn coverage ends and ends the last day of the month of your sixth birthday.

(8) For all other CN coverage, the certification period is 12 months.

~~((7))~~ (9) If you are a child, eligibility is continuous throughout the certification period regardless of a change in circumstances, unless a required premium (described in WAC 182-505-0225) is not paid for three consecutive months, or you:

(a) Turn age 19;

(b) Move out-of-state; or

(c) Die.

~~((8))~~ (10) When you turn 19, the certification period ends after the redetermination process described in WAC 182-504-0125 is completed, even if the 12-month period is not over, unless:

(a) You are receiving inpatient services (described in WAC 182-514-0230) on the last day of the month you turn 19;

(b) The inpatient stay continues into the following month or months; and

(c) You remain eligible except for turning age 19.

~~((9))~~ (11) A retroactive certification period is described in WAC 182-504-0005.

~~((10))~~ (12) Coverage under premium-based programs included in apple health for kids as described in chapter 182-505 WAC begins no sooner than the month after creditable coverage ends.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-21-072, § 182-504-0015, filed 10/13/22, effective 11/13/22; WSR 22-12-033, § 182-504-0015, filed 5/24/22, effective 6/24/22; WSR 17-12-017, § 182-504-0015, filed 5/30/17, effective 6/30/17. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-504-0015, filed 7/29/14, effective 8/29/14. WSR 11-24-018, recodified as § 182-504-0015, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090, and Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009). WSR 11-03-001, § 388-416-0015, filed 1/5/11, effective 2/5/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.402, 74.09.470, and 2008 session law. WSR 09-07-086, § 388-416-0015, filed 3/17/09, effective 4/17/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.700, and 2007 c 5. WSR 08-05-018, § 388-416-0015, filed 2/12/08, effective 3/14/08. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 06-24-036, § 388-416-0015, filed 11/30/06, effective 1/1/07. Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. WSR 05-19-031, § 388-416-0015, filed 9/12/05, effective 10/13/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-21-064, § 388-416-0015, filed 10/18/04, effective 11/18/04. Statutory Authority: RCW 74.08.090, 74.09.530, and 2003 c 10. WSR 04-03-019, § 388-416-0015, filed 1/12/04, effective 2/12/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090 and 74.09.450. WSR 00-08-002, § 388-416-0015, filed 3/22/00, effective 5/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-416-0015, filed 7/31/98, effective 9/1/98. Formerly 388-509-0970, 388-521-2105, 388-522-2210 and 388-522-2230.]

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

**WAC 182-504-0035 Washington apple health—Renewals.** (1) For all Washington apple health (WAH) programs, the following applies:

(a) You are required to complete a renewal of eligibility at least every ~~((twelve))~~ 12 months with the following exceptions:

(i) If you are eligible for WAH medically needy with spenddown, then you must complete a new application at the end of each three- or six-month base period;

(ii) If you are eligible for WAH alien emergency medical, then you are certified for a specific period of time to cover emergency in-patient hospitalization costs only (see WAC 182-507-0115(8)); (~~(e)~~)

(iii) If you are eligible for WAH refugee coverage, you must complete a renewal of eligibility after (~~eight~~) 12 months; or

(iv) If you are a child on apple health for kids without premiums, your first renewal is due the month of your sixth birthday.

(b) You may complete renewals online, by phone, or by paper application that you mail or fax to us (the agency or its designee).

(c) If your WAH is renewed, we decide the certification period according to WAC 182-504-0015.

(d) We review all eligibility factors subject to change during the renewal process.

(e) We redetermine eligibility as described in WAC 182-504-0125 and send you written notice as described in WAC 182-518-0005 before WAH is terminated.

(f) If you need help meeting the requirements of this section, we provide equal access services as described in WAC 182-503-0120.

(2) For programs based on modified adjusted gross income (MAGI) as described in WAC 182-503-0510:

(a) Sixty days prior to the end of the certification period:

(i) When information from electronic sources shows income is reasonably compatible (as defined in WAC 182-500-0095), we administratively renew your coverage (as defined in WAC 182-500-0010) for a new certification period and send you a notice of renewal with the information used. You are required to inform us if any of the information we used is wrong.

(ii) If we are unable to complete an administrative renewal (as defined in WAC 182-500-0010), you must give us a signed renewal in order for us to decide if you will continue to get WAH coverage beyond the current certification period.

(iii) We follow the requirements described in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(b) If your WAH coverage is terminated because you did not renew, you have (~~ninety~~) 90 days from the termination date to give us a completed renewal. If we decide you are still eligible to get WAH coverage, we will restore your WAH without a gap in coverage.

(3) For non-MAGI based programs (as described in WAC 182-503-0510):

(a) Forty-five days prior to the end of the certification period, we send notice with a renewal form (~~(to be completed, signed, and returned by)~~). You must renew before the end of the certification period by either calling the department of social and health services at the number listed on the form to renew by telephone, renew online at [www.washingtonconnection.org](http://www.washingtonconnection.org), or mailing or delivering to the department of social and health services a signed renewal form with the information required by WAC 182-503-0005.

(b) We follow the requirements in WAC 182-518-0015 to request any additional information needed to complete the renewal process or to terminate coverage for failure to renew.

(c) To complete your renewal, you must give us all the other information requested on the application that is needed to determine your eligibility.

(d) If you are terminated for failure to renew, you have (~~thirty~~) 30 days from the termination date to submit a completed renewal. If still eligible, we will restore your WAH without a gap in coverage.

(4) If we determine that you are not eligible for renewal of your WAH coverage, we:

(a) Consider your eligibility for all other WAH programs before ending your WAH coverage; and

(b) Coordinate with the health benefit exchange any request for information that is necessary to determine your eligibility for:

(i) Other WAH programs; and

(ii) With respect to qualified health plans, health insurance premium tax credits (as defined in WAC 182-500-0045) and cost-sharing reductions (as defined in WAC 182-500-0020).

(5) We reconsider our decision that you are not eligible for WAH coverage without a new application from you when:

(a) We receive the information that we need to decide if you are eligible within (~~(thirty)~~) 30 days of the date on the termination notice; or

(b) You request a hearing within (~~(ninety)~~) 90 days of the date on the renewal denial letter and an administrative law judge (ALJ) or HCA review judge decides our decision was wrong (per chapter 182-526 WAC).

(6) If you disagree with our decision, you can ask for a hearing. If we decided that you are not eligible for renewal because we do not have enough information, the ALJ will consider the information we already have and anymore information you give us. The ALJ does not consider the previous absence of information or failure to respond in determining if you are eligible.

[Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-504-0035, filed 7/29/14, effective 8/29/14.]

## OTS-4721.2

AMENDATORY SECTION (Amending WSR 17-12-018, filed 5/30/17, effective 6/30/17)

**WAC 182-505-0210 Eligibility for children.** (1) **General eligibility.** For purposes of this section, a child must:

(a) Be a Washington state resident under WAC 182-503-0520 and 182-503-0525;

(b) Provide a Social Security number under WAC 182-503-0515, unless exempt; and

(c) Meet program-specific requirements.

(2) **Deemed eligibility groups.** A child is automatically eligible for coverage without an application if the child meets the program-specific requirements in (a) through (c) of this subsection.

(a) **Newborn coverage.** A child under age one is eligible for categorically needy (CN) coverage if the birth parent was eligible for Washington apple health on the date of delivery:

(i) Including a retroactive eligibility determination; or

(ii) By meeting a medically needy (MN) spenddown liability with expenses incurred by the date of the newborn's birth:

~~((b))~~ **(b) Washington apple health for supplemental security income (SSI) recipients.** A child who is eligible for SSI is automatically eligible for CN coverage under WAC 182-510-0001.

(c) **Foster care coverage.** A child age ~~((twenty))~~ 20 and younger is eligible for CN coverage under WAC 182-505-0211 when the child is in foster care or receives subsidized adoption services. For children who age out of the foster care program, see WAC 182-505-0211(3).

(3) **Continuous eligibility for children under age six.** Children are eligible for Washington apple health continuous eligibility for children under age six when they:

(a) Have household income at or below 215 percent of the federal poverty level at the time of application; or

(b) Received coverage under subsection (5) of this section and are no longer eligible for deemed coverage under subsection (5)(b) or (c) of this section.

(4) **MAGI-based eligibility groups.** A child age ~~((eighteen))~~ 18 and younger is eligible for CN coverage based on modified adjusted gross income (MAGI):

(a) At no cost when the child's countable income does not exceed the standard in WAC 182-505-0100 (6)(a);

(b) With payment of a premium when the child's countable income does not exceed the standard in WAC 182-505-0100 (6)(b), and the child meets additional eligibility criteria in WAC 182-505-0215;

(c) Under chapter 182-514 WAC, if the child needs long-term care services because the child resides or is expected to reside in an institution, as defined in WAC 182-500-0050, for ~~((thirty))~~ 30 days or longer. An institutionalized child is eligible for coverage under the medically needy program if income exceeds the CN income standard for a person in an institution (special income level);

(d) Under WAC 182-505-0117, if a child is pregnant.

~~((4))~~ **(5) Non-MAGI-based children's programs.** The agency determines eligibility for the:

(a) Medically needy (MN) program according to WAC 182-510-0001(6) and 182-519-0100. A child age ~~((eighteen))~~ 18 and younger is eligible if the child:

(i) Is not eligible for MAGI-based coverage under subsection ~~((3))~~ (4) of this section;

(ii) Meets citizenship or immigration requirements under WAC 182-503-0535 (2)(a), (b), (c), or (d); and

(iii) Meets any spenddown liability required under WAC 182-519-0110.

(b) **SSI-related program.** A child age ~~((eighteen))~~ 18 and younger is eligible for CN or MN SSI-related coverage if the child meets:

(i) SSI-related eligibility under chapter 182-512 WAC;

(ii) Citizenship or immigration requirements under WAC 182-503-0535 (2)(a), (b), (c), or (d); and

(iii) Any MN spenddown liability under WAC 182-519-0110.

(c) **SSI-related long-term care program.**

(i) A child age ~~((eighteen))~~ 18 and younger is eligible for home and community based (HCB) waiver programs under chapter 182-515 WAC if the child meets:

(A) SSI-related eligibility under chapter 182-512 WAC;

(B) Citizenship or immigration requirements under WAC 182-503-0535 (2)(a), (b), (c), or (d); and

(C) Program-specific age and functional requirements under chapters 388-106 and 388-845 WAC.



(ii) A child age (~~(eighteen)~~) 18 and younger who resides or is expected to reside in a medical institution as defined in WAC 182-500-0050 is eligible for institutional medical under chapter 182-513 WAC if the child meets:

(A) Citizenship or immigration requirements under WAC 182-503-0535 (2) (a), (b), (c), or (d);

(B) Blindness or disability criteria under WAC 182-512-0050; and

(C) Nursing facility level of care under chapter 388-106 WAC.

~~((5))~~ (6) **Alien emergency medical program.** A child age ~~((twenty))~~ 20 and younger who does not meet the eligibility requirements for a program described under subsections (2) through ~~((4))~~ (5) of this section is eligible for the alien emergency medical (AEM) program if the child meets:

(a) The eligibility requirements of WAC 182-507-0110; and

(b) MN spenddown liability, if any, under WAC 182-519-0110.

~~((6))~~ (7) **Other provisions.**

(a) A child residing in an institution for mental disease (IMD) as defined in WAC 182-500-0050(1) is not eligible for inpatient hospital services, unless the child is unconditionally discharged from the IMD before receiving the services.

(b) A child incarcerated in a public institution as defined in WAC 182-500-0050(4) is only eligible for inpatient hospital services.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-12-018, § 182-505-0210, filed 5/30/17, effective 6/30/17; WSR 16-01-034, § 182-505-0210, filed 12/8/15, effective 1/8/16; WSR 15-15-153, § 182-505-0210, filed 7/21/15, effective 8/21/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-505-0210, filed 7/29/14, effective 8/29/14. WSR 12-13-056, recodified as § 182-505-0210, filed 6/15/12, effective 7/1/12. Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.057, 74.09.500, and PPACA, § 2102 (b) (1) (A) of the Social Security Act, and Public Law 111-3 (CHIPRA). WSR 11-23-077, § 388-505-0210, filed 11/15/11, effective 12/16/11. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090, and Apple Health for Kids Act (ESHB 2128); 42 U.S.C. 1305; Public Law 111-3 (Children's Health Insurance Program Reauthorization Act of 2009). WSR 11-03-001, § 388-505-0210, filed 1/5/11, effective 2/5/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.402, 74.09.470, and 2008 session law. WSR 09-07-086, § 388-505-0210, filed 3/17/09, effective 4/17/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.700, and 2007 c 5. WSR 08-05-018, § 388-505-0210, filed 2/12/08, effective 3/14/08. Statutory Authority: RCW 74.08.090, 74.09.530, and 74.09.415. WSR 05-23-013, § 388-505-0210, filed 11/4/05, effective 1/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-057, § 388-505-0210, filed 7/13/04, effective 8/13/04. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 03-14-107, § 388-505-0210, filed 6/30/03, effective 7/31/03. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. WSR 02-17-030, § 388-505-0210, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.08.090, 74.04.050, [74.04.]055, and [74.04.]057. WSR 01-11-110, § 388-505-0210, filed 5/21/01, effective 6/21/01. Statutory Authority: RCW 74.08.090 and 74.08A.100. WSR 99-17-023, § 388-505-0210, filed 8/10/99, effective 9/10/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-505-0210,

filed 7/31/98, effective 9/1/98. Formerly WAC 388-509-0905,  
388-509-0910 and 388-509-0920.]

## WSR 23-20-063

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Board of Naturopathy)

[Filed September 28, 2023, 4:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-11[1].

Title of Rule and Other Identifying Information: Naturopathic physician continuing education (CE) requirements, WAC 246-836-080. The board of naturopathy (board) is proposing amendments to ensure clear CE requirements including: Designation of pharmacology CE credits, classification of CE categories, and implementation of the health equity CE requirements, mandated by ESSB 5229 (chapter 276, Laws of 2021).

Hearing Location(s): On November 17, 2023, at 8:30 a.m., virtually via Zoom at [https://us02web.zoom.us/webinar/register/WN\\_htWlk5PWTYSYvTuWcn3cpw#/registration](https://us02web.zoom.us/webinar/register/WN_htWlk5PWTYSYvTuWcn3cpw#/registration). After registering, you will receive a confirmation email containing information about joining the webinar; or in person at 111 Israel Road S.E., Town Center 2, Room 153, Tumwater, WA 98501.

Date of Intended Adoption: November 17, 2023.

Submit Written Comments to: Rachel Phipps, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, by November 7, 2023.

Assistance for Persons with Disabilities: Contact Rachel Phipps, phone 564-233-1277, fax 360-236-2901, TTY 711, email [naturopathic@doh.wa.gov](mailto:naturopathic@doh.wa.gov), by November 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing amendments to WAC 246-836-080 to update and provide further clarification to the naturopathic physician CE regulations. The purpose of this rule making is to clarify the pharmacology CE requirements, clarify and update the organizations that are available to fulfill category one hours, and implement the health equity CE requirements mandated by ESSB 5229.

The board is proposing amendments to clarify how the board accepts the designation of pharmacology content to meet the requirements in WAC 246-836-080(3). The board learned that very few approved entities include the number of pharmacy CE hours on course completion certificates, creating a barrier for licensees to fulfill the pharmacology CE requirement for naturopathic physicians. In early 2021, the board issued the interpretive statement: Continuing Education Pharmacology Documentation, BON 21-01. The board is now proposing amendments to put this clarification in rule so that naturopathic physicians are able to provide accurate forms of certification and demonstrate that they have met the requirements in WAC 246-836-080(3).

The board is also proposing amendments that clarify the list of organizations available to fulfill category one hours. The board is proposing amendments that clarify the category types, the list of approved accredited entities, and the required hours for each category without changing the total required amount of CE.

The board is also proposing to adopt the department model rules for health equity by amending section WAC 246-836-080 to implement ESSB 5229. The proposed amendments establish minimum standards for licensed naturopathic physicians of two hours of health equity CE every four years. The proposed rule does not change total naturopathic physician CE hours but requires two hours in health equity CE every

four years which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

Reasons Supporting Proposal: RCW 18.36A.160 (1)(h) directs the board to adopt rules implementing a continuing competency program. The purpose of the statute is to allow the board to adopt rules that set forth specific requirements which will protect the public through clearly stated standards of practice. The intent of the proposed rule is to protect the public by keeping licensed naturopathic physicians informed of developments in a rapidly changing field. The proposal meets the intent of the statute by establishing clear, enforceable CE requirements for licensees to follow. The board recognizes that there are many CE programs intended to improve clinical practice and patient care that may not satisfy the requirements of the rule as it is currently written. The proposed amendments will not increase the number of hours required but will provide additional training opportunities. These options would give licensees the choice to participate in activities more in line with their individual practices and provide greater flexibility in choosing courses.

It is the intent of RCW 43.70.613 to equip health care workers with health equity training that provides the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings includes implicit bias trainings to identify strategies to reduce bias during assessment and diagnosis in an effort to address structural factors, such as bias, racism, and poverty, that manifest as health inequities.

Two hours of training allows individuals to gain a foundation in health equity that can have an immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity. The two hours of health equity CE credits may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours.

The proposed amendments to WAC 246-836-080 provide updated CE requirements that are clear, concise, and necessary to ensure patient safety.

Statutory Authority for Adoption: RCW 43.70.613 and 18.36A.160.

Statute Being Implemented: RCW 43.70.613; ESSB 5229 (chapter 276, Laws of 2021); RCW 18.36A.160 and 18.36A.110.

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

Name of Proponent: Board of naturopathy, governmental.

Name of Agency Personnel Responsible for Drafting: Rachel Phipps, 111 Israel Road S.E., Tumwater, WA 98501, 564-233-1277; Implementation and Enforcement: James Chaney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2831.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Rachel Phipps, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-233-1277, fax 360-236-2901, TTY 711, email naturopathic@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).  
 Scope of exemption for rule proposal:  
 Is fully exempt.

September 28, 2023  
 U. James Chaney  
 Executive Director  
 Board of Naturopathy

#### OTS-4620.4

AMENDATORY SECTION (Amending WSR 19-08-032, filed 3/27/19, effective 1/1/21)

**WAC 246-836-080 Continuing competency program.** (1) General provisions. Each licensed naturopathic physician must complete ~~((sixty))~~ 60 hours of continuing education related to the naturopathic scope of practice in Washington state every two years, as provided in chapter 246-12 WAC ~~((, Part 7))~~.

(2) (a) A license holder's first ~~((sixty))~~ 60 hour continuing education requirement is due on the third renewal date after the license is issued. After that, it is due every other year on the licensee's renewal date.

(b) A licensee may begin to accrue continuing education from the date of initial licensure and apply it toward the fulfillment of their first continuing education requirement.

(c) License reissuance. When applying for reissuance of an expired license, a naturopathic physician must attest to ~~((sixty))~~ 60 hours of continuing education for the two years preceding the reissuance application. Upon reissuance, the licensee's continuing education sequence will resume based on the last active license continuing education cycle.

(3) ~~((a))~~ A licensee ~~((s))~~ must complete a minimum of ~~((fifteen))~~ 15 continuing education hours over two years on the subject of pharmacology ~~((consistent with naturopathic scope of practice in this state. Course content, or a portion thereof, must be designated as pharmacology by an entity listed in subsection (5)(a)(i) or (b)(i) of this section))~~. Examples of eligible pharmacology course content include, but are not limited to:

~~((a))~~ (i) Legend substances as defined in RCW 69.41.010;

~~((b))~~ (ii) Controlled substances in chapter 69.50 RCW;

~~((c))~~ (iii) Biopharmacology, which is the study of medicinal or drug products manufactured in, extracted from, or semi-synthesized from biological sources;

~~((d))~~ (iv) Pharmacognosy, which is the study of medicinal drugs derived from plants or other natural sources;

~~((e))~~ (v) Contraindications or interactions of drug-to-drug, drug-to-herb, or drug-to-nutrient; or

~~((f))~~ (vi) Other subjects approved by the board.

(b) Acceptable documentation is information included on course completion certificates, transcripts, course descriptions, course brochures, or course registration forms.

(c) Pharmacology hours may be fulfilled through courses meeting the requirements in any category in subsection (5) of this section.

(4) Required continuing education topics. The hours spent completing required topics under this subsection count toward meeting any applicable continuing education requirements. Nothing in this subsection is intended to expand or limit the naturopathic scope of practice.

(a) Suicide prevention requirements. As part of continuing education and in accordance with RCW 43.70.442, a licensed naturopathic physician must complete a board-approved one-time training that is at least six hours long in suicide assessment, treatment, and management. This training must be completed by the end of the ((first full continuing education reporting period after January 1, 2016, or the)) first full continuing education reporting period after initial licensure ((, whichever is later.

~~(a) Until July 1, 2017, a board-approved training must be an empirically supported training in suicide assessment, including screening and referral, suicide treatment, and suicide management, and meet any other requirement in RCW 43.70.442.~~

~~(b) Beginning July 1, 2017,)) Training accepted by the board must be on the department's model list developed in accordance with rules adopted by the department that establish minimum standards for training programs. ((The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.~~

~~(e)) A board-approved training must be at least six hours in length and may be provided in one or more sessions.~~

~~((d) The hours spent completing the training in suicide assessment, treatment, and management under this subsection count toward meeting any applicable continuing education requirements.~~

~~(e) Nothing in this subsection is intended to expand or limit the naturopathic scope of practice.))~~

(b) Health equity requirements. As part of continuing education and in accordance with RCW 43.70.613, a licensed naturopathic physician must complete a minimum of two hours of training in health equity to address health inequities such as bias, racism, and poverty. A naturopathic physician fulfills this by complying with the requirements in WAC 246-12-800, 246-12-810, 246-12-820, and 246-12-830. Such training must be completed once every four years, beginning with the first full continuing education cycle due on or after January 1, 2024.

(5) Categories of creditable continuing education.

(a) Category 1. A licensee is required to obtain a minimum of ~~((twenty))~~ 40 hours over two years in this category; however, all ~~((sixty))~~ 60 hours may be earned in this category. Category 1 credit hours and activities include:

(i) Live-attended, both in-person and remote-attendance, education ~~((related to the naturopathic scope of practice in this state approved or offered by the following sources))~~ through a board-approved entity that is accredited to provide continuing or professional education including, but not limited to:

(A) American Association of Naturopathic Physicians (AANP);

(B) Washington Association of Naturopathic Physicians (WANP);

(C) North American Naturopathic Continuing Education Accreditation Council (NANCEAC) through the Federation of Naturopathic Medicine Regulatory Authorities (FNMRA); ~~((or))~~

(D) Naturopathic medicine academic institutions and scholarly organizations approved by the board according to WAC 246-836-150;

(E) Continuing medical educational programs in the clinical application of naturopathic medicine that are approved by any naturopathic licensing authority in the states or Canada;

(F) The Accreditation Council for Continuing Medical Education (ACCME);

(G) The American Nurses Credentialing Center (ANCC); or

(H) The Accreditation Council for Pharmacy Education (ACPE).

(ii) Prerecorded education meeting the requirement in (a)(i) of this subsection ~~((related to the naturopathic scope of practice in this state. To qualify for credit under this section the course must))~~ which require the licensee to ~~((pass))~~ complete an ~~((examination))~~ assessment in order to complete the course.

(iii) Completion of a one year residency accredited by the Council on Naturopathic Medical Education (CNME) meets the full ~~((two year))~~ 60 hour continuing education requirement.

~~((iv)) Licensees completing a medical marijuana continuing education course approved by the department may claim the hours designated by the course provider for this activity. This activity can only be claimed once during a two year continuing education cycle.~~

~~(v) Licensees completing the suicide prevention requirement in subsection (4) of this section may claim six hours for this activity. This activity can only be claimed once during a two year continuing education cycle.)~~

(b) Category 2. Category 2 credit hours and activities include:

(i) ~~((Live-attended, both in-person and remote attendance, education relevant to various other health professions, however licensees may only claim those hours that have content consistent with naturopathic scope of practice in this state. Hours must be obtained through an entity that is accredited or nationally recognized, examples of which include, but are not limited to, courses accredited by:~~

~~(A) The accreditation council for continuing medical education (ACCME);~~

~~(B) The American Nurses Credentialing Center (ANCC); or~~

~~(C) The accreditation council for pharmacy education (ACPE).~~

~~(ii) Prerecorded education meeting the requirement in (b)(i) of this subsection, however only content related to naturopathic scope of practice in this state may be claimed. To qualify for credit under this section the course must require the licensee to complete an examination in order to complete the course.~~

~~(iii)) Teaching, lecturing, or serving as a residency director((, which)) for a residency approved by the Council on Naturopathic Medical Education (CNME) shall equate ((one full-time work week)) 40 hours worked to one continuing education hour.~~

~~((iv))~~ (ii) Publishing in a peer-reviewed, scientific journal or textbook, or presenting content that would qualify for credit under category 1. Ten credit hours may be claimed for each paper, exhibit, presentation, publication, or chapter. Credit shall be claimed as of the date materials were presented or published.

(c) Category 3. A licensee may claim up to a maximum of five hours over two years in this category. Category 3 credit hours and activities include:

(i) Online study not otherwise specified above;

(ii) Multimedia education (CD/DVD);

(iii) Certification or recertification in basic life support ((also known as cardiopulmonary resuscitation)) (BLS), advanced cardiac life support (ACLS), neonatal resuscitation (NRP), or pediatric advanced life support (PALS);

(iv) Self-study including, but not limited to, board examination preparation or reading papers and publications where an assessment tool is required upon completion; and

(v) Courses in nonclinical practice topics, such as:

(A) Health promotion;

(B) Health care cost management;

(C) Coding;

(D) Regulatory affairs; or

(E) Professional ethics, disciplinary prevention, or jurisprudence. Licensees completing the board's jurisprudence examination may claim two hours for this activity. This activity can only be claimed once during a two year continuing education reporting cycle.

(vi) In-person or virtual attendance at a board of naturopathy business meeting. Each meeting counts for one hour. Acceptable documentation is the licensee's presence as recorded in the board's minutes or transcript.

(6) Documentation. A licensee must submit documentation upon request or audit. Acceptable documentation includes:

(a) Certificates of completion;

(b) Transcripts;

(c) Letters from instructors; or

(d) Other records, which must include participant's name, course title, course content, dates, provider(s) name(s), and signature of sponsor or instructor.

(e) For self-study activities that do not offer documentation, licensees should keep lists with hours spent reading publications, papers, or articles; or hours spent preparing for specialty board examinations.

(7) Waiver or extension. In emergent or unusual situations, such as personal or family illness, the board may waive all or part of the continuing education requirement for a particular continuing education reporting period for an individual licensee if the board determines there is good cause. The board may also grant the licensee an extension period in order to meet the full requirement if the board determines there is good cause. Licensees requesting an extension must include a detailed plan on how they will obtain the deficient hours. Hours obtained for an extension (~~can only be applied~~) only apply to the extension and cannot be used for any other continuing education reporting cycle. The board may require verification of the emergent or unusual situation as is necessary.

[Statutory Authority: RCW 18.36A.160. WSR 19-08-032, § 246-836-080, filed 3/27/19, effective 1/1/21. Statutory Authority: RCW 18.36A.160 and 43.70.442 as amended in 2014 and 2015. WSR 16-06-008, § 246-836-080, filed 2/18/16, effective 3/20/16. Statutory Authority: RCW 18.36A.160, 2011 c 41, and 2011 c 40. WSR 12-13-104, § 246-836-080, filed 6/20/12, effective 7/21/12. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-836-080, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.36A.060. WSR 92-02-018 (Order 224), § 246-836-080, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-836-080, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.36A.060. WSR 88-14-009 (Order PM 742), § 308-34-180, filed 6/24/88.]



**WSR 23-20-074**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed September 29, 2023, 1:41 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-28-082

Is step M on the salary schedule different than other salary steps?, 357-28-084 May an employee be appointed to step M upon demotion (voluntary or involuntary)?, 357-28-086 When may an employee progress to step M of the salary range?, 357-28-088 If an employee transfers or demotes will the time spent at step L count towards the six years to qualify for step M in the new position?, 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range?, 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action?, 357-28-155 How is an employee's salary determined upon demotion?, 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or child birth?, 357-31-500 When must disability leave due to pregnancy and/or childbirth be granted?, 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool?, 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool?, and 357-58-141 When must a Washington management service (WMS) employee receive location based premium pay?

Hearing Location(s): On November 14, 2023, at 9:00 a.m., via Zoom meeting (with call-in option) ID 881 7165 8224, Call in 253-215-8782, Passcode 850872, Zoom link <https://ofm-wa-gov.zoom.us/j/88171658224?pwd=T1R1aUF4K3hEOEtCLzBHZnBaamVnZz09>.

Date of Intended Adoption: November 21, 2023.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email [brandy.chinn@ofm.wa.gov](mailto:brandy.chinn@ofm.wa.gov), by November 7, 2023.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by November 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 357-28-082 to align with WAC 357-28-090 to allow an employee to be appointed to step M upon initial hire for recruitment, retention, or other business-related reasons. Amending WAC 357-28-084 to clarify an employee may be appointed to step M if the demotion is a result of a reasonable accommodation, or as a result of layoff in accordance with WAC 357-28-135, or for recruitment, retention, or other business-related reasons. Amending WAC 357-28-086(1) to state an employee may be appointed to step M as a result of a layoff option to align with WAC 357-28-088. Amending WAC 357-28-088 to clarify that if an employee was demoted as a result of a reasonable accommodation or due to a layoff action, the employee may be appointed to step M and correct the WAC reference. Amending WAC 357-28-120 to (1) clarify if an employee is reallocated to a class with the same or lower salary range the employee's base salary may be set higher than step M if allowed by the employer's salary determination policy until they vacate the position, or their salary falls within the new salary range; and (2) reflect gender-neutral pronouns. Amending WAC 357-28-135 to state an employee whose previous base sal-

ary was at step M of a salary range when accepting a layoff option to a position with a lower salary range maximum at the time of being appointed must be placed at step M of the new salary range; to state an employee whose previous base salary was at step L of a salary range when accepting a layoff option to a position with a lower salary range, any previous time spent at step L will count towards the requirement to progress to step M of the new salary range; and to reorganize the layout of the section for clarity. Amending WAC 357-28-155 to add subsection (2) to state if an employee is demoted as a result of a reasonable accommodation, the employee may be appointed to step M in accordance with WAC 357-28-084. Amending WAC 357-31-480 to update the correct RCW references. Amending WAC 357-31-500 to remove the term "permanent." Amending WAC 357-31-687 to remove the requirement for an employee to use all of their accrued vacation leave and paid military leave before receiving shared leave because an employee may maintain up to 40 hours of vacation leave and 40 hours of paid military leave. Amending WAC 357-31-797 to remove the requirement for an employee to use all of their accrued sick leave and vacation leave before receiving shared leave from the veterans' in-state service shared leave pool because an employee can maintain up to 40 hours of vacation leave and 40 hours of sick leave. Amending WAC 357-58-141 to clarify when an employee must receive location-based premium pay.

Reasons Supporting Proposal: The proposed amendments to WAC 357-28-082, 357-28-084, 357-28-086, 357-28-088, 357-28-120, 357-28-135, and 357-28-155 are to clarify certain scenarios based on questions received from stakeholders since inception. On July 1, 2013, new rules were adopted to implement a new step M that was provided in the 2013-2015 operating budget. Step M was originally implemented as a longevity step to allow employees who have been at the top step (step L) in the same salary range for six years to progress to step M. The proposed amendment to WAC 357-31-480 is to update the correct references from RCW 49.78.390 to 50A.15.110. RCW 49.78.390 was repealed in 2018 and therefore is no longer applicable. Parental leave is in addition to any leave for sickness or temporary disability as provided under the Federal Family and Medical Leave Act of 1993 and the Washington Paid Family and Medical Leave Act. The proposed amendment to WAC 357-31-500 is to align with the Washington state law against discrimination, chapter 49.60 RCW, and Title VII of the Civil Rights Act of 1964 or the Pregnancy Discrimination Act. An employee does not have to hold permanent status to qualify for a leave of absence for reasons of pregnancy, disability, and childbirth. The proposed amendments to WAC 357-31-687 and 357-31-797 are housekeeping in nature. The proposed amendment to WAC 357-58-141 is changing the word "and" to "or." This will clarify that location-based premium must be paid when a Washington management service employee is assigned to work on McNeil Island **or** when an employee is assigned to a permanent duty station in King County.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Statute Being Implemented: RCW 41.06.133 and 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue S.W., Olympia, WA 98501, 360-878-2901.

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

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

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

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

Scope of exemption for rule proposal:  
Is fully exempt.

September 29, 2023

Nathan Sherrard

Assistant Legal Affairs Counsel

## OTS-4482.5

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

**WAC 357-28-082 Is step M on the salary schedule different than other salary steps?** Step M is a longevity step. An employee cannot be appointed to step M upon initial hire unless for recruitment and retention or other business related reasons in accordance with WAC 357-28-090.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-026, § 357-28-082, filed 11/21/14, effective 12/22/14; WSR 13-19-043, § 357-28-082, filed 9/13/13, effective 10/18/13.]

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

**WAC 357-28-084 ((Can)) May an employee be appointed to step M upon demotion (voluntary or involuntary)?** An employee cannot be appointed to step M upon demotion (voluntary or involuntary) unless:

- (1) The employee was at step M of the salary range from which the employee is demoting ((or));
- (2) The employee was previously at step M in the salary range of the class the employee is demoting to;
- (3) The demotion is a result of a reasonable accommodation;
- (4) The employee was appointed to a position due to layoff action in accordance with WAC 357-28-135; or
- (5) It is for recruitment and retention or other business related reasons in accordance with WAC 357-28-090.

[Statutory Authority: Chapter 41.06 RCW. WSR 13-19-043, § 357-28-084, filed 9/13/13, effective 10/18/13.]

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

**WAC 357-28-086 When may an employee progress to step M of the salary range?** (1) If an employee is currently at step L of a salary range, the employee will progress to step M of that same salary range six years from the date they were advanced or appointed to step L. The progression to step M is regardless of what has transpired in the six years since the employee was appointed to step L, provided that the employee is at step L in the same pay range as the pay range the employee was in at the beginning of the six-year period except in accordance with WAC 357-28-088.

(2) With director approval, higher education institutions may make all movements to step M effective:

(a) The first of the current month for actions occurring between the first and the (~~fifteenth~~) 15th of the month; or

(b) The first of the following month for actions occurring between the (~~sixteenth~~) 16th and the end of the month.

[Statutory Authority: Chapter 41.06 RCW. WSR 13-19-043, § 357-28-086, filed 9/13/13, effective 10/18/13.]

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

**WAC 357-28-088 If an employee transfers or demotes will the time spent at step L count towards the six years to qualify for step M in the new position?** If an employee transfers to a position the time at step L in the previous position will count towards the six years to qualify for step M in the new position.

If an employee is demoted (voluntary or involuntary), the time at step L in the previous position will not count towards the six years to qualify for step M except if the demotion is a result of a reasonable accommodation or due to layoff action in accordance with WAC 357-28-135(~~(+2)~~) (4).

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-026, § 357-28-088, filed 11/21/14, effective 12/22/14; WSR 13-19-043, § 357-28-088, filed 9/13/13, effective 10/18/13.]

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

**WAC 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range?** An employee occupying a position that is reallocated to a class with the same or lower salary range must be placed within the new salary range at an amount equal to (~~(his/her)~~) their previous base salary. If the previous base salary exceeds the new salary range, the employee's base salary must be set equal to step M of the salary range for the reallocated position. The employee's base salary may be set higher than step M if allowed by the employer's salary determination policy, but not exceeding the previous base salary, (~~if allowed by~~

~~the employer's salary determination policy)) until such time as the employee vacates the position or their salary falls within the new salary range.~~

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-026, § 357-28-120, filed 11/21/14, effective 12/22/14; WSR 13-19-043, § 357-28-120, filed 9/13/13, effective 10/18/13; WSR 05-01-205, § 357-28-120, filed 12/21/04, effective 7/1/05.]

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

**WAC 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action?** (1) The base salary of an employee ((appointed to a position due to a layoff action must be)) who accepts a layoff option must have their salary determined as follows:

~~((1))~~ (a) An employee who accepts a layoff option to a different position with the same salary range keeps the same base salary.

~~((2))~~ (b) An employee who ~~((accepts a demotion in lieu of layoff or))~~ accepts a layoff option to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new range, the employee's base salary must be set equal to step M of the new salary range ~~((. If the employee's previous base salary was at step M of the salary range the employee must be placed at step M of the new salary range))~~.

~~((3))~~ (2) The base salary of an employee who is appointed from an internal or statewide layoff list must have their salary determined as follows:

(a) An employee who is appointed to a position with the same range as the position from which the employee was laid off must be placed within the range at a salary equal to the employee's previous base salary.

~~((4))~~ (b) An employee who is appointed ((from an internal or statewide layoff list)) to a position with a lower range maximum than the position from which the employee was laid off must have the salary determined by the employer's salary determination policy.

(3) An employee whose previous base salary was at step M of a salary range when accepting a layoff option to a position with a lower salary range maximum at the time of being appointed must be placed at step M of the new salary range.

(4) An employee whose previous base salary was at step L of a salary range when accepting a layoff option to a position with a lower salary range, any previous time spent at step L will count towards the requirement to get to step M of the new salary range.

[Statutory Authority: Chapter 41.06 RCW. WSR 14-24-026, § 357-28-135, filed 11/21/14, effective 12/22/14; WSR 13-19-043, § 357-28-135, filed 9/13/13, effective 10/18/13; WSR 05-01-205, § 357-28-135, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-155 How is an employee's salary determined upon demotion?** (1) The base salary of an employee who accepts a demotion in lieu of layoff must be set in accordance with WAC 357-28-135.

(2) If the demotion is a result of a reasonable accommodation, they may be appointed to step M in accordance with WAC 357-28-084.

(3) An employee demoted for any other reason must be paid within the salary range of the class to which the position is allocated. The employee's base salary must be determined in accordance with the employer's salary determination policy.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-205, § 357-28-155, filed 12/21/04, effective 7/1/05.]

#### OTS-4543.4

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

**WAC 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth?** ((Under RCW 49.78.390,)) Consistent with RCW 50A.15.110, parental leave under Title 50A RCW and the family leave required by the Federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) must be in addition to any leave for sickness or temporary disability because of pregnancy or childbirth as provided in WAC 357-31-500.

[Statutory Authority: Chapter 41.06 RCW. WSR 08-07-062, § 357-31-480, filed 3/17/08, effective 4/18/08; WSR 07-17-124, § 357-31-480, filed 8/20/07, effective 9/20/07; WSR 07-11-094, § 357-31-480, filed 5/16/07, effective 7/1/07; WSR 05-08-140, § 357-31-480, filed 4/6/05, effective 7/1/05.]

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

**WAC 357-31-500 When must disability leave due to pregnancy and/or childbirth be granted?** Leave of absence must be granted for the period of time that ((a permanent)) an employee is sick or temporarily disabled because of pregnancy and/or childbirth.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-08-140, § 357-31-500, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-01-022, filed 12/3/21, effective 7/1/22)

**WAC 357-31-687 Must employees use their own leave before receiving shared leave from the uniformed service shared leave pool?** Employees who are eligible to receive shared leave from the uniformed service shared leave pool must first use all accrued compensatory time, accrued holiday credit, recognition leave as described in WAC 357-31-565, and personal holiday(~~(, vacation leave, and paid military leave allowed under RCW 38.40.060)~~) before receiving shared leave from the uniformed service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and paid military leave allowed under RCW 38.40.060 and can maintain up to 40 hours of vacation leave and 40 hours of paid military leave.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-687, filed 12/3/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 41.04.655. WSR 20-24-017, § 357-31-687, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW. WSR 18-03-080, § 357-31-687, filed 1/15/18, effective 2/16/18.]

AMENDATORY SECTION (Amending WSR 22-01-022, filed 12/3/21, effective 7/1/22)

**WAC 357-31-797 Must employees use their own leave before receiving shared leave from the veterans' in-state service shared leave pool?** Employees who are eligible to receive shared leave from the veterans' in-state service shared leave pool must first use all accrued compensatory time, accrued holiday credit, recognition leave as described in WAC 357-31-565, and personal holiday(~~(, sick leave, and vacation leave)~~) before receiving shared leave from the veterans' in-state service shared leave pool. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to 40 hours of vacation leave and 40 hours of sick leave.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-797, filed 12/3/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 41.04.655. WSR 20-24-017, § 357-31-797, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW. WSR 18-03-080, § 357-31-797, filed 1/15/18, effective 2/16/18.]

### OTS-4225.3

AMENDATORY SECTION (Amending WSR 19-17-040, filed 8/15/19, effective 9/23/19)

**WAC 357-58-141 When must a Washington management service (WMS) employee receive location based premium pay?** Location based premium pay at the rate specified in the compensation plan must be paid when a WMS employee is:

(1) Assigned to work on McNeil Island at the special commitment center and for each day the employee is physically working on the island. Days in paid status not working on the island will not qualify for premium pay; (~~and~~) or

(2) Assigned to a permanent duty station in King County. When an employee is no longer permanently assigned to a King County duty station they will not be eligible for location based premium pay.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-17-040, § 357-58-141, filed 8/15/19, effective 9/23/19.]



**WSR 23-20-075**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed September 29, 2023, 1:41 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-28-265

For the purpose of computing eligibility for overtime compensation, are holidays and leave with pay considered time worked?, 357-31-027 When must a higher education employer allow a part-time employee to use accrued holiday credit?, 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?, 357-31-100 Must an employer have a policy for requesting and approving leave?, 357-31-130 When must an employer allow an employee to use their accrued sick leave?, 357-31-160 When a former employee is re-employed, is sick leave restored?, 357-31-200 When must an employer grant the use of vacation leave?, 357-31-230 When must an employee be granted the use of accrued compensatory time?, 357-31-327 When must an employer grant leave without pay?, 357-31-330 For what reasons may an employer grant leave without pay?, and 357-31-567 When must an employer grant the use of recognition leave?

Hearing Location(s): On November 14, 2023, at 9:00 a.m., via Zoom meeting (with call-in option) ID 881 7165 8224, Call in 253-215-8782, Passcode 850872, Zoom link <https://ofm-wa-gov.zoom.us/j/88171658224?pwd=T1R1aUF4K3hEOEtCLzBHZnBaamVnZz09>.

Date of Intended Adoption: November 21, 2023.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email [brandy.chinn@ofm.wa.gov](mailto:brandy.chinn@ofm.wa.gov), by November 7, 2023.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by November 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 357-28-265 to state when leave is taken to travel and receive each dose or booster of COVID-19 vaccine it will be considered time worked for the purpose of computing eligibility for overtime compensation. Amending WAC 357-31-027 to add subsection (8) to require that a higher education employer must allow a part-time high-risk employee to utilize accrued holiday credit to protect themselves from risk of exposure to an infectious or contagious disease if the employer determines no other accommodation is reasonable besides the use of leave.

Amending WAC 357-31-070 (1)(f), 357-31-130(3), 357-31-200 (1)(h), 357-31-230(8), and 357-31-567 (1)(d) to clarify an employer must approve any high-risk employee's request, to use their personal holiday, accrued sick leave, accrued vacation leave, accrued compensatory time, and recognition leave when the employee seeks an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease if the employer determines no other accommodation is reasonable besides the use of leave. A high-risk employee is no longer limited to the definition of an employee who is high-risk as defined in RCW 49.17.062. Amending WAC 357-31-100(9) to clarify an employer must have a policy that allows any high-risk employee who is seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and is requesting to use their accrued leave to be allowed to do so if the employer determines no other

accommodation is reasonable besides the use of leave (a high-risk employee is no longer limited to the definition of an employee who is high-risk as defined in RCW 49.17.062); removing the requirement for an employer to grant leave without pay for this reason; and adding new language to state the employer may require that the employee's request be supported by verification or documentation. Amending WAC 357-31-100 to add subsection (10) to require an employer's leave policy to allow a high-risk employee seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease during a public health emergency to use leave without pay (LWOP) if the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062. Amending WAC 357-31-100 to add subsection (13) to require an employer's leave policy to address whether former employees who are reemployed after five years from state service may be restored unused sick leave credits in their leave policy. Amending WAC 357-31-160 to add language to clarify that separation is from state service and to clarify former employees who are reemployed after being separated from state service for five years or longer may be restored unused sick leave credits in accordance with the employer's leave policy. Amending WAC 357-31-327(6) to clarify an employer must allow a high-risk employee seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease during a public health emergency to use leave without pay if the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062. Amending WAC 357-31-330(14) to expand when an employer may grant LWOP to risks related to an exposure to an infectious or contagious disease.

Reasons Supporting Proposal: The proposed amendment to WAC 357-28-265 is to align Washington state department of labor and industries guidance that if an employer requires employees to receive a COVID-19 vaccine, the time associated with receiving the vaccine must be considered hours worked and overtime must be paid under the Washington State Minimum Wage Act. The proposed amendment to WAC 357-31-027 was inadvertently missed during previous rule making in 2022. The proposed amendments to WAC 357-31-070(f), 357-31-100(9), 357-31-130(3), 357-31-200 (1)(h), 357-31-230(8), and 357-31-567 (1)(d) are to align with a policy decision to allow for a high-risk employee outside of a declared public health emergency to utilize all accrued leave types when seeking an accommodation to protect themselves from risk of exposure to an infectious or contagious disease if no other accommodation is reasonable. The proposed amendments to WAC 357-31-100 to add subsection (10) and 357-31-327(6) are to clarify that an employer must grant LWOP to a high-risk employee during a declared public health emergency. The requirement for employers to approve LWOP for this reason is limited to the duration of a declared public health emergency as required in RCW 49.17.062. The proposed amendment to WAC 357-31-100 to add subsection (13) and 357-31-160 is to align with a longstanding rule interpretation. The proposed amendment to WAC 357-31-330(14) expands the reasons when an employer may grant LWOP for an employee to protect themselves, or a relative or household member, from risks related specifically to coronavirus disease or the risk of exposure to any infectious or contagious disease.

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: RCW 41.06.133.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, implementation, and Enforcement: Brandy Chinn, 128 10th Avenue S.W., Olympia, WA 98501, 360-878-2901.

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

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

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

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

Scope of exemption for rule proposal:

Is fully exempt.

September 29, 2023

Nathan Sherrard

Assistant Legal Affairs Counsel

#### OTS-4483.1

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-265 For the purpose of computing eligibility for overtime compensation, are holidays and leave with pay considered time worked?** For purposes of computing eligibility for overtime compensation, paid holidays during the employee's regular work schedule **are** considered time worked. Leave with pay during the employee's regular work schedule is **not** considered time worked except for:

(1) When leave is taken to travel and receive each dose or booster of COVID-19 vaccine in accordance with WAC 357-31-325; or

(2) When leave is taken to receive each dose or booster of COVID-19 vaccine in accordance with WAC 357-31-326.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-205, § 357-28-265, filed 12/21/04, effective 7/1/05.]

#### OTS-4610.5

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**WAC 357-31-027 When must a higher education employer allow a part-time employee to use accrued holiday credit?** Higher education employers must allow a part-time employee as defined in WAC

357-01-2290(2) to use accrued holiday credit for the following reasons:

(1) Employees must request to use accrued holiday credit in accordance with the employer's leave policy. When considering employees' requests to use accrued holiday credit, employers must consider their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued holiday credit 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 holiday credit may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued holiday credit 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 holiday credit 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) An employee must be granted the use of accrued holiday credit 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) Employers may require that accumulated holiday credit be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(7) If the employee requests to use their accrued holiday credit when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(8) When a high-risk employee seeks an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

[Statutory Authority: RCW 41.06.133, 41.04.120, and chapter 49.100 RCW. WSR 22-24-027, § 357-31-027, filed 11/30/22, effective 1/1/23. Statutory Authority: Chapter 41.06 RCW. WSR 22-01-022, § 357-31-027, filed 12/3/21, effective 7/1/22.]

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

- 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;
  - (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;
  - (f) When a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeks ~~((a reasonable))~~ an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave; or
  - (g) If the employee requests to use their personal holiday when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

[Statutory Authority: RCW 41.06.133, 41.04.120, and chapter 49.100 RCW. WSR 22-24-027, § 357-31-070, filed 11/30/22, effective 1/1/23. Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-070, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-070, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-070, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-070, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-070, filed 7/11/08, effective 10/1/08; WSR 07-03-054, § 357-31-070, filed 1/12/07, effective 2/15/07; WSR 05-08-136, § 357-31-070, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**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;
- (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 18 weeks in accordance with WAC 357-31-133;
- (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;
- (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;
- (8) Address whether a general government employee may take additional accrued leave beyond 30 days in a two-year period to participate in life-giving procedures in accordance with RCW 41.06.570;
- (9) Allow a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeking ~~((a reasonable))~~ an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease to use their accrued leave ~~((and leave without pay))~~ if the employer determines no other accommodation is reasonable besides the use of leave. The employer may require that the employees request be supported by verification or documentation;
- (10) Allow a high-risk employee seeking an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease during a public health emergency to use leave without pay if the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062;
- (11) Allow an employee to use unpaid leave when the employee is granted a temporary leave of absence for service in an elective office in accordance with WAC 357-31-374(1); ~~((and~~
- ~~(11))~~ (12) Allow an employee to use unpaid and/or accrued paid leave when the employee is granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2). The policy must state employees who request a leave of absence for legislative service must provide notice to the employer at least 30 days in ad-

vance for a regular legislative session or as soon as the session is proclaimed for a special session; and

(13) Address whether former employees who are reemployed after five years of separation from state service may be restored unused sick leave credits in accordance with WAC 357-31-160.

[Statutory Authority: RCW 41.06.133, 41.04.120, and chapter 49.100 RCW. WSR 22-24-027, § 357-31-100, filed 11/30/22, effective 1/1/23. Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-100, filed 5/27/22, effective 7/1/22; WSR 20-24-019, § 357-31-100, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-100, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-11-135, § 357-31-100, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-100, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-100, filed 5/14/14, effective 6/16/14; WSR 10-11-071, § 357-31-100, filed 5/14/10, effective 6/15/10; WSR 09-03-013, § 357-31-100, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-100, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-100, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**WAC 357-31-130 When must an employer allow an employee to use their accrued sick leave?** The employer may require medical verification 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.

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

(1) 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.

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

(3) When a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeks ~~((a reasonable))~~ an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(4) To allow an employee to provide care for a child who has been exposed to a contagious disease and is required to quarantine; or when a household or family member needs additional care, not covered by subsection (6) of this section, who has been exposed to a contagious disease and is required to quarantine.

(5) 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.

(6) 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.

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

(8) 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 (6) of this section.

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

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

(9) 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.

(10) 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.

(11) 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.

(12) 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 18 weeks. Sick leave for this purpose must be taken during the first year following the child's birth or placement.

(13) If the employee requests to use sick leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

[Statutory Authority: RCW 41.06.133, 41.04.120, and chapter 49.100 RCW. WSR 22-24-027, § 357-31-130, filed 11/30/22, effective 1/1/23. Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-130, filed 5/27/22, effective 7/1/22; WSR 20-24-025, § 357-31-130, filed 11/20/20, effective 12/28/20. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-130, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 19-11-135, § 357-31-130, filed 5/22/19, effective 7/1/19. Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-31-130, filed 2/10/18, effective 3/13/18; WSR 14-11-035, § 357-31-130, filed 5/14/14, effective 6/16/14; WSR 09-17-057 and 09-18-112, § 357-31-130, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-130, filed 1/9/09, effective 2/13/09; WSR 08-15-043, §



357-31-130, filed 7/11/08, effective 10/1/08; WSR 05-08-136, § 357-31-130, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

**WAC 357-31-160 When a former employee is ((re-employed)) reemployed, is sick leave restored?** Former employees who are ((re-employed)) reemployed within five years of their separation from state service must be restored unused sick leave credits, if any, to which they were entitled at the time of separation. Former employees who are reemployed after five years of their separation from state service may be restored unused sick leave credits in accordance with the employer's leave policy. The employee may use the restored balance in accordance with WAC 357-31-130 and 357-31-133.

If the employee was retired from government service before being ((re-employed)) reemployed, when the employee subsequently retires again or dies, only that unused sick leave accrued since the date of reemployment minus that taken within the same period may be compensated per the conversion provisions of WAC 357-31-150.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-160, filed 5/27/22, effective 7/1/22; WSR 05-08-136, § 357-31-160, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**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.

(h) When a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeks (~~(a reasonable)~~) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave.

(i) When the employee requests to use their vacation leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through (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.

[Statutory Authority: RCW 41.06.133, 41.04.120, and chapter 49.100 RCW. WSR 22-24-027, § 357-31-200, filed 11/30/22, effective 1/1/23. Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-200, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-200, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 09-17-057 and 09-18-112, § 357-31-200, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-200, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-200, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-200, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**WAC 357-31-230 When must an employee be granted the use of 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 60 days of a biennium.

(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.

(8) A high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeking ~~((a reasonable))~~ an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease must be granted the use of accrued compensatory time if the employer determines no other accommodation is reasonable besides the use of leave.

(9) An employee must be granted the use of compensatory time when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

[Statutory Authority: RCW 41.06.133, 41.04.120, and chapter 49.100 RCW. WSR 22-24-027, § 357-31-230, filed 11/30/22, effective 1/1/23. Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-230, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-230, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 11-23-054, § 357-31-230, filed 11/10/11, effective 12/13/11; WSR 10-23-120, § 357-31-230, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-230, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-230, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-230, filed 7/11/08, effective 10/1/08; WSR 05-08-137, § 357-31-230, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**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.

(6) When a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeks (~~(a reasonable)~~) an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease during a public health emergency and the employer determines no other accommodation is reasonable besides the use of leave in accordance with RCW 49.17.062.

(7) When an employee is granted a temporary leave of absence for service in an elective office or for legislative service in accordance with WAC 357-31-374.

[Statutory Authority: RCW 41.06.133, 41.04.120, and chapter 49.100 RCW. WSR 22-24-027, § 357-31-327, filed 11/30/22, effective 1/1/23. Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-327, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-327, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 14-24-024, § 357-31-327, filed 11/21/14, effective 12/22/14; WSR 09-17-057 and 09-18-112, § 357-31-327, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-327, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-327, filed 7/11/08, effective 10/1/08; WSR 07-17-129, § 357-31-327, filed 8/20/07, effective 9/20/07.]

AMENDATORY SECTION (Amending WSR 22-12-076, filed 5/27/22, effective 7/1/22)

**WAC 357-31-330 For what reasons may an employer grant leave without pay?** Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

(1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;

(2) Educational leave;

(3) Leave for government service in the public interest;

(4) Military leave of absence as required by WAC 357-31-370;

(5) Parental leave as required by WAC 357-31-460;

(6) Family care emergencies as required by WAC 357-31-295;

(7) Bereavement or condolence;

(8) Absence due to inclement weather as provided in WAC 357-31-255;

(9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 357-19-295;

(10) Serious health condition of an eligible employee's child, spouse, registered domestic partner, or parent as required by WAC 357-31-525;

(11) Leave taken voluntarily to reduce the effect of an employer's layoff;

(12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability;

(13) Employees receiving time loss compensation; or

(14) For an employee to protect themselves, or a relative or household member, from ~~((risks related to coronavirus disease 2019 (COVID-19))~~ risk of exposure to an infectious or contagious disease. In determining whether to grant leave, an employer may consider current workload demands and business needs that require employees to perform their duties.

[Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-330, filed 5/27/22, effective 7/1/22; WSR 21-12-020, § 357-31-330, filed 5/24/21, effective 7/1/21; WSR 09-17-056 and 09-18-113, § 357-31-330, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-330, filed 1/9/09, effective 2/13/09; WSR 05-08-138, § 357-31-330, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 22-24-027, filed 11/30/22, effective 1/1/23)

**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;

(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;

(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;

(d) When a high-risk employee (~~(, as defined in RCW 49.17.062,)~~) seeks ~~((a reasonable))~~ an accommodation to protect themselves from the risk of exposure to an infectious or contagious disease and the employer determines no other accommodation is reasonable besides the use of leave; and

(e) When an employee requests to use recognition leave when granted a temporary leave of absence for legislative service in accordance with WAC 357-31-374(2).

(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.

[Statutory Authority: RCW 41.06.133, 41.04.120, and chapter 49.100 RCW. WSR 22-24-027, § 357-31-567, filed 11/30/22, effective 1/1/23. Statutory Authority: Chapter 41.06 RCW. WSR 22-12-076, § 357-31-567, filed 5/27/22, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW and RCW 50A.15.060. WSR 20-06-008, § 357-31-567, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 10-23-120, § 357-31-567, filed 11/17/10, effective 12/18/10; WSR 09-17-056 and 09-18-113, § 357-31-567, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-31-567, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-31-567, filed 7/11/08, effective 10/1/08.]

**WSR 23-20-076**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed September 29, 2023, 1:42 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-01-172  
Family members.

Hearing Location(s): On November 14, 2023, at 9:00 a.m., via Zoom meeting (with call-in option), ID 881 7165 8224, Call in 253-215-8782, Passcode 850872, Zoom link <https://ofm-wa-gov.zoom.us/j/88171658224?pwd=T1R1aUF4K3hEOEtCLzBHZNbaamVnZz09>.

Date of Intended Adoption: November 21, 2023.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email [brandy.chinn@ofm.wa.gov](mailto:brandy.chinn@ofm.wa.gov), by November 7, 2023.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by November 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 357-01-172 Family members, to replace the reference to RCW 26.50.010 with 49.76.020.

Reasons Supporting Proposal: ESSB 1320 passed during the 2021 legislative session, chapter 215, Laws of 2021. The act modernized, harmonized, and improved the efficacy and accessibility of laws concerning civil protection order. In part, the act repealed chapter 26.50 RCW, Domestic violence prevention, and amended RCW 46.76.020, domestic violence leave, to define "dating relationship" in accordance with RCW 7.105.010.

Statutory Authority for Adoption: RCW 41.06.133.

Statute Being Implemented: RCW 41.06.133.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue S.W., Olympia, WA 98501, 360-878-2901.

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

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

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

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

Scope of exemption for rule proposal:

Is fully exempt.

September 29, 2023  
Nathan Sherrard  
Assistant Legal Affairs Counsel

## OTS-4893.1

AMENDATORY SECTION (Amending WSR 18-05-032, filed 2/10/18, effective 3/13/18)

**WAC 357-01-172 Family members.** Individuals considered to be members of the family are parent, sibling, parent-in-law, spouse, registered domestic partner, grandparent, grandchild, minor/dependent child, and child. For the purpose of domestic violence, sexual assault, or stalking provisions within Title 357 WAC family member also includes a domestic partner as defined in RCW 26.60.020 or a person with whom the employee has a dating relationship as defined in RCW (~~26.50.010~~) 49.76.020.

[Statutory Authority: Chapter 41.06 RCW. WSR 18-05-032, § 357-01-172, filed 2/10/18, effective 3/13/18; WSR 09-17-057 and 09-18-112, § 357-01-172, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-013, § 357-01-172, filed 1/9/09, effective 2/13/09; WSR 08-15-043, § 357-01-172, filed 7/11/08, effective 10/1/08; WSR 05-12-093, § 357-01-172, filed 5/27/05, effective 7/1/05.]



**WSR 23-20-077**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed September 29, 2023, 1:42 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-04-030

What right does an employee have to return to the classified service from exempt service?, 357-19-195 If a permanent employee in a classified position accepts an appointment to an exempt position, what is the employee's right to return to a position in the classified service?, 357-19-197 What information must a receiving employer verify when a permanent employee exercises their right to return to classified service from an exempt appointment?, and 357-19-200 When must an employee apply to return to classified service from exempt service?

Hearing Location(s): On November 14, 2023, at 9:00 a.m., via Zoom meeting (with call-in option), ID 881 7165 8224, Call in 253-215-8782, Passcode 850872, Zoom link <https://ofm-wa-gov.zoom.us/j/88171658224?pwd=T1R1aUF4K3hEOEtCLzBHZnBaamVnZz09>.

Date of Intended Adoption: November 21, 2023.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email [brandy.chinn@ofm.wa.gov](mailto:brandy.chinn@ofm.wa.gov), by November 7, 2023.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by November 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align Title 357 WAC with the requirements of the new law. The proposed amendments to WAC 357-04-030, 357-19-195, and 357-19-200 are to state that if a permanent employee exercises their right to return to classified service from exempt service, the right of return may not be exercised if the employee is terminated from the exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance. The proposed new WAC 357-19-197 is to address what information a receiving employer must verify when a permanent employee exercises their right to return to classified service from an exempt appointment. For purposes of these rules, "written notice" includes notice sent by email to the employee's work email address; and "pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

Reasons Supporting Proposal: Chapter 148, Laws of 2023 (ESHB 1361) passed during the 2023 legislative session with an effective date of July 23, 2023. Section 3 of this bill amends RCW 41.06.070 Exemptions to chapter—Right of reversion, to add subsection (6) which suspends a person's right to reversion during the pendency of a workplace investigation if the allegations being investigated could result in a finding of gross misconduct or malfeasance.

Statutory Authority for Adoption: RCW 41.06.150.

Statute Being Implemented: RCW 41.06.070.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue S.W., Olympia, WA 98501, 360-878-2901.

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

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

Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328

(5) (b) (ii) for exemption.

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

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

Scope of exemption for rule proposal:

Is fully exempt.

September 29, 2023

Nathan Sherrard

Assistant Legal Affairs Counsel

## OTS-4860.1

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

**WAC 357-04-030 What right does an employee have to return to the classified service from exempt service?** As required by RCW 41.06.070, any employee having permanent status in a classified position who accepts an appointment in an exempt position has the right to return to classified service in accordance with WAC 357-19-195, 357-19-200, and 357-19-205. (~~As long as the employee was not terminated from the exempt position for gross misconduct or malfeasance,~~) The employee has the right to return to the highest class of position in which the employee previously held permanent status or to a position of similar nature and salary. The right of return may not be exercised if the employee is terminated from the exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance.

For purposes of this section:

(1) "Written notice" includes notice sent by email to the employee's work email address; and

(2) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-04-030, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 06-15-067, § 357-04-030, filed 7/13/06, effective 8/14/06; WSR 05-01-203, § 357-04-030, filed 12/21/04, effective 7/1/05.]

## OTS-4861.1

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-195** **If a permanent employee in a classified position accepts an appointment to an exempt position, what is the employee's right to return to a position in the classified service?** A permanent employee who accepts an appointment to an exempt position has the right to return to classified service at any time (~~as long as the employee was not~~). However, the right of return may not be exercised if the employee is terminated from an exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance.

The employee's right is to a position in the highest class in which the employee previously held permanent status or to a position of similar nature and salary. The return right is to the most recent employer with which permanent status in the highest class was held. A position in the highest class does not necessarily mean return to the most recent employer.

If upon an employee being returned to a classified position there are fewer positions than there are employees entitled to such positions, the employer's layoff procedure applies.

For purposes of this section:

(1) "Written notice" includes notice sent by email to the employee's work email address; and

(2) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-195, filed 12/21/04, effective 7/1/05.]

NEW SECTION

**WAC 357-19-197** **What information must a receiving employer verify when a permanent employee exercises their right to return to classified service from an exempt appointment?** (1) When a permanent employee exercises their right to return to classified service from an exempt appointment in accordance with RCW 41.06.070, the receiving employer must verify:

(a) The employee is not the subject of an active pending workplace investigation of which the employee was given written notice, and which may result in a finding of gross misconduct or malfeasance or was not terminated from the exempt position for gross misconduct or malfeasance; and

(b) The employee was not terminated from the exempt position for gross misconduct or malfeasance.

(2) For purposes of this section:

(a) "Written notice" includes notice sent by email to the employee's work email address; and

(b) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

[]

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-200 When must an employee apply to return to classified service from exempt service?** Employees exercising return rights should provide as much advance notice as is practicable to the receiving employer. The employee must apply to return to classified service within (~~(thirty)~~) 30 calendar days of:

- Separation from employment in the exempt position, or
- Separation from employment in any subsequent exempt position if there is no break in state service of more than (~~(thirty)~~) 30 calendar days between initial and subsequent exempt appointments.

Employees who apply for return to classified service within (~~(thirty)~~) 30 calendar days must be returned to a position at the time of separation from the exempt appointment or the time of application, whichever is later.

The right of return may not be exercised if the employee is terminated from the exempt position for gross misconduct or malfeasance, or during the pendency of an investigation if the employee has been given written notice that they are the subject of an active workplace investigation which may result in a finding of gross misconduct or malfeasance.

For purposes of this section:

(1) "Written notice" includes notice sent by email to the employee's work email address; and

(2) "Pendency of an investigation" lasts until the employer has taken final appropriate action based on the finding of the investigation.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-200, filed 12/21/04, effective 7/1/05.]

**WSR 23-20-078**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed September 29, 2023, 1:43 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-16-017

When must an employer disclose the salary range or management band, other compensation and a description of benefits for a position?, 357-16-220 May an employer confirm an individual's wage or salary history?, 357-19-377 What provisions apply to nonpermanent appointments?, and 357-19-380 What provisions of the civil service rules apply to nonpermanent employees?

Hearing Location(s): On November 14, 2023, at 9:00 a.m., via Zoom meeting (with call-in option), ID 881 7165 8224, Call in 253-215-8782, Passcode 850872, Zoom link <https://ofm-wa-gov.zoom.us/j/88171658224?pwd=T1R1aUF4K3hEOEtCLzBHZnBaamVnZz09>.

Date of Intended Adoption: November 21, 2023.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email [brandy.chinn@ofm.wa.gov](mailto:brandy.chinn@ofm.wa.gov), by November 7, 2023.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by November 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align Title 357 WAC with the requirements of the new law. The proposed amendment to WAC 357-16-017 is to repeal the requirement for an employer to provide the salary range or management band upon request of an individual for employment after an employer has initially offered the individual the position; add language to require an employer to disclose the salary range or management band in each job posting which includes a general description of all the benefits and other compensation; and to define the terms "salary range" and "management band" for the section. The proposed amendment to WAC 357-16-220 is to define "negotiation" to include an offer of employment with compensation by the employer and acceptance of the offer by the applicant. This change aligns with Washington state department of labor and industries' interpretation that an offer of employment with compensation by the employer and acceptance of the offer by the applicant would constitute the element of "negotiation." The proposed amendments to WAC 357-19-377 is to add subsection (5) to require nonpermanent appointments to be in compliance with the requirements governing wage and salary information. The proposed amendment to WAC 357-19-380 is to state other chapters of the civil service rules may apply to nonpermanent employees where specifically stated.

Reasons Supporting Proposal: ESSB 5761 passed during the 2022 legislative session, chapter 242, Laws 2022, with an effective date of January 1, 2023. The bill amends RCW 49.58.110 to state an employer must disclose the wage scale and salary range and provide a general description of all the benefits or other compensation in each posting for a job opening. ESSB 5761 also states upon request of an employee who is offered an internal transfer to a new position or promotion that the employer must provide the employee with the wage scale or the salary range of the position they would be transferring into. Amendments to WAC 357-19-377 and 357-19-380 were inadvertently missed in 2019 on WSR 20-06-009, effective March 30, 2020.

Statutory Authority for Adoption: RCW 41.06.133 and 41.06.150.

Statute Being Implemented: RCW 49.58.100 and 49.58.110.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, implementation, and Enforcement: Brandy Chinn, 128 10th Avenue S.W., Olympia, WA 98501, 360-878-2901.

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

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

Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328

(5) (b) (ii) for exemption.

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

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

Scope of exemption for rule proposal:

Is fully exempt.

September 29, 2023

Nathan Sherrard

Assistant Legal Affairs Counsel

## OTS-4591.1

AMENDATORY SECTION (Amending WSR 20-06-009, filed 2/20/20, effective 3/30/20)

**WAC 357-16-017 When must an employer ((provide)) disclose the salary range or management band, other compensation and a description of benefits for a position?** In accordance with RCW 49.58.110, an employer must ((provide)) disclose 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))~~ In each job posting which includes a general description of all the benefits and other compensation; 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.))~~

(3) For the purposes of this section:

(a) "Employer" also includes those employers with fewer than ((fifteen)) 15 employees;

(b) "Salary range" includes Step M; and

(c) "Management band" is the most reasonable and genuinely expected range that an agency has identified within their salary administration policy for Washington management services.

[Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-16-017, filed 2/20/20, effective 3/30/20.]

AMENDATORY SECTION (Amending WSR 20-06-009, filed 2/20/20, effective 3/30/20)

**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. Negotiation includes an offer of employment with compensation by the employer and acceptance of the offer by the applicant.

For the purposes of this section "employer" also includes those employers with fewer than (~~fifteen~~) 15 employees.

[Statutory Authority: Chapter 41.06 RCW, RCW 49.58.100 and 49.58.110. WSR 20-06-009, § 357-16-220, filed 2/20/20, effective 3/30/20.]

#### OTS-4592.1

AMENDATORY SECTION (Amending WSR 21-14-042 and 22-01-153, filed 6/30/21 and 12/15/21, effective 7/1/22)

**WAC 357-19-377 What provisions apply to nonpermanent appointments?** Nonpermanent appointments are subject to the following provisions:

(1) Nonpermanent appointees must meet the competencies and other requirements of the position to which they are appointed.

(2) Nonpermanent appointments may be filled on a noncompetitive basis which means the employer is not required to comply with the rules on recruitment, assessment and certification as provided in chapter 357-16 WAC.

(3) Nonpermanent appointments may be filled using the competitive process specified in chapter 357-16 WAC as long as the eligible applicant indicates a willingness to accept a nonpermanent appointment.

(4) Employers may underfill a position with a nonpermanent appointment.

(5) 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.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.070. WSR 21-14-042 and 22-01-153, § 357-19-377, filed 6/30/21 and 12/15/21, effective 7/1/22. Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-377, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-380 What provisions of the civil service rules apply to nonpermanent employees?** The leave and holiday provisions of chapter 357-31 WAC and compensation provisions of chapter 357-28 WAC apply to employees in nonpermanent appointments. Other chapters of civil service rules may apply where specifically stated.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-380, filed 12/21/04, effective 7/1/05.]



## WSR 23-20-079

## PROPOSED RULES

## OFFICE OF

## FINANCIAL MANAGEMENT

[Filed September 29, 2023, 1:43 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-58-040  
Which manager positions or managerial employees are excluded from WMS and not covered by chapter 357-58 WAC?

Hearing Location(s): On November 14, 2023, at 9:00 a.m., via Zoom meeting (with call-in option), ID 881 7165 8224, Call in 253-215-8782, Passcode 850872, Zoom link <https://ofm-wa-gov.zoom.us/j/88171658224?pwd=T1R1aUF4K3hEOEtCLzBHZnBaamVnZz09>.

Date of Intended Adoption: November 21, 2023.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), Raad Building, 128 10th Avenue S.W., P.O. Box 47500, Olympia, WA 98504, email [brandy.chinn@ofm.wa.gov](mailto:brandy.chinn@ofm.wa.gov), by November 7, 2023.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by November 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 357-58-040(1) to add the exemption reference to RCW 41.06.022 for clarification.

Reasons Supporting Proposal: 2SHB 1122 passed during the 2023 legislative session, chapter 136, Laws of 2023, with an effective date of January 1, 2024. This bill amends chapter 41.06 RCW, State civil service law, and chapter 41.80 RCW, State collective bargaining, to grant Washington management service (WMS) employees in certain salary bands the right to collectively bargain. WMS collective bargaining agreements may not take effect before July 1, 2025.

Statutory Authority for Adoption: RCW 41.06.150.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, implementation, and Enforcement: Brandy Chinn, 128 10th Avenue S.W., Olympia, WA 98501, 360-878-2901.

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

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

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

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

Scope of exemption for rule proposal:

Is fully exempt.

September 29, 2023

Nathan Sherrard

Assistant Legal Affairs Counsel

## OTS-4892.1

AMENDATORY SECTION (Amending WSR 20-06-011, filed 2/20/20, effective 5/1/20)

**WAC 357-58-040 Which manager positions or managerial employees 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 in accordance with RCW 41.06.022;
- (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.

[Statutory Authority: Chapter 41.06 RCW and RCW 41.06.133. WSR 20-06-011, § 357-58-040, filed 2/20/20, effective 5/1/20. Statutory Authority: Chapter 41.06 RCW. WSR 05-12-068, § 357-58-040, filed 5/27/05, effective 7/1/05.]

**WSR 23-20-091**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed October 2, 2023, 12:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-024.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-418-0005 How will I know what changes to report?, 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?, 388-470-0045 How do my resources count toward the resource limits for cash assistance?, and 388-470-0070 How vehicles are counted toward the resource limit for cash assistance.

Hearing Location(s): On November 7, 2023, at 10:00 a.m., virtually via Microsoft Teams or call in. Please see the department of social and health services (DSHS) website for the most up-to-date information.

Date of Intended Adoption: Not before November 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by November 7, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by October 24, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective February 1, 2024, these amendments will expand resource exemptions for community services division cash programs and increase the cash resource limit from \$6,000 to \$12,000. These amendments are necessary to implement 2SHB 1447 (chapter 418, Laws of 2023). As needed, amendments also make additional changes required to improve clarity, update policy, or better align rule language with state and federal law or regulations.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090.

Statute Being Implemented: 2SHB 1447 (chapter 418, Laws of 2023).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick Budde, P.O. Box 45470, Olympia, WA 98504-5770, 360-764-0068.

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

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

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

Is exempt under RCW 19.85.025(4).

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

Explanation of exemptions: The proposed rules do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

September 27, 2023  
Katherine I. Vasquez  
Rules Coordinator

## SHS-5002.1

AMENDATORY SECTION (Amending WSR 20-02-018, filed 12/19/19, effective 1/20/20)

### **WAC 388-418-0005 How will I know what changes to report? (1)**

You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

(a) If you receive **cash** benefits, you need to tell us if:

(i) You move;

(ii) Someone moves out of your home;

(iii) Your total gross monthly income goes over the:

(A) (~~Payment standard~~) Income limit under WAC (~~(388-478-0033)~~) 388-478-0090 if you receive ABD cash or HEN referral; or

(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;

(iv) You have liquid resources more than (~~six thousand dollars~~) \$12,000; or

(v) You have a change in employment, you need to tell us if:

(A) You get a job or change employers;

(B) Your schedule changes from part-time to full-time or full-time to part-time;

(C) You have a change in your hourly wage rate or salary; or

(D) You stop working.

(b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:

(i) You move;

(ii) The child you are caring for moves out of the home;

(iii) Anyone related to the child you are caring for moves into or out of the home;

(iv) There is a change in the recipient child's earned or unearned income unless they are in school full-time as described in WAC 388-450-0070;

(v) The recipient child has liquid resources more than (~~six thousand dollars~~) \$12,000;

(vi) A recipient child in the home becomes a foster child; or

(vii) You legally adopt the recipient child.

(2) If you do not receive cash assistance but you do receive benefits from basic food, you must report changes for the people in your assistance unit under chapter 388-408 WAC, and tell us if:

(a) Your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060;

(b) You or a member of your household receives substantial lottery or gambling winnings in a single game that is equal to or over the elderly or disabled resource limit under WAC 388-470-0005 (8)(a); or

(c) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below (~~twenty~~) 20 hours per week.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, 74.08A.250, and 7 C.F.R. 273.11(r), 84 F.R. 15083. WSR 20-02-018, § 388-418-0005, filed 12/19/19, effective 1/20/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 19-01-105, § 388-418-0005, filed 12/18/18, effective 2/1/19. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.010, 74.08A.250 and 2017 c 20. WSR 18-09-017, § 388-418-0005, filed 4/10/18, effective 7/1/18. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 7 U.S.C. § 2015, and 7 C.F.R. § 273.12 (a)(5)(v). WSR 15-09-036, § 388-418-0005, filed 4/9/15, effective 5/10/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 2011 1st sp.s. c 42, and 2011 1st sp.s. c 36. WSR 12-04-051, § 388-418-0005, filed 1/30/12, effective 3/1/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. WSR 11-02-071, § 388-418-0005, filed 1/5/11, effective 2/5/11; WSR 10-07-007, § 388-418-0005, filed 3/4/10, effective 4/4/10. Statutory Authority: RCW 74.04.050, 74.04.055, and 2007 c 522. WSR 07-20-042, § 388-418-0005, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.010. WSR 05-19-060, § 388-418-0005, filed 9/16/05, effective 11/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 44.04.280. WSR 05-09-021, § 388-418-0005, filed 4/12/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-21-026, § 388-418-0005, filed 10/13/04, effective 11/13/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-06-026, § 388-418-0005, filed 2/23/04, effective 3/25/04; WSR 03-21-028, § 388-418-0005, filed 10/7/03, effective 11/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 01-11-109, § 388-418-0005, filed 5/21/01, effective 7/1/01; WSR 99-23-034, § 388-418-0005, filed 11/10/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-418-0005, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 23-07-095, filed 3/17/23, effective 4/17/23)

**WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?** (1) The following definitions apply to this chapter:

- (a) **"We"** means the department of social and health services.
- (b) **"You"** means a person applying for or getting benefits from the department.
- (c) **"Fair market value"** or **"FMV"** means the price at which you could reasonably sell the resource.
- (d) **"Equity value"** means the FMV minus any amount you owe on the resource.
- (e) **"Community property"** means a resource in the name of the husband, wife, or both.
- (f) **"Separate property"** means a resource of a married person that one of the spouses:
- (i) Had possession of and paid for before they were married;
  - (ii) Acquired and paid for entirely out of income from separate property; or
  - (iii) Received as a gift or inheritance.
- (2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or basic food when:
- (a) It is a resource we must count under WAC 388-470-0045 for cash assistance or WAC 388-470-0055 for basic food;
  - (b) You own the resource and we consider you to own a resource if:
    - (i) Your name is on the title to the property; or
    - (ii) You have property that does not have a title;
    - (c) You have control over the resource, which means the resource is actually available to you; and
    - (d) You could legally sell the resource or convert it into cash within 20 days.
- (3) For cash assistance, you must try to make your resources available even if it will take you more than 20 days to do so, unless:
- (a) There is a legal barrier; or
  - (b) You must petition the court to release part or all of a resource.
- (4) When you apply for assistance, we count your resources as of:
- (a) The date of your interview, if you are required to have an interview; or
  - (b) The date of your application, if you are not required to have an interview.
- (5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.
- (6) For cash assistance, there is an equity value resource limit of (~~(\$6,000)~~) \$12,000.
- (7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for basic food.
- (8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for basic food:
- (a) \$4,250 if your AU has either an elderly or disabled individual; or
  - (b) \$2,750 for all other AUs.
- (9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:
- (a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.
  - (b) For basic food, we count the entire amount unless you can prove that the entire amount is not available to you.

(10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household;

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of a resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 23-07-095, § 388-470-0005, filed 3/17/23, effective 4/17/23; WSR 22-09-040, § 388-470-0005, filed 4/13/22, effective 5/14/22; WSR 19-01-105, § 388-470-0005, filed 12/18/18, effective 2/1/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-470-0005, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-470-0005, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-470-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 11-37, "Supplemental Nutrition Assistance Program FY 2012 Asset Limit Increase for Households with and [an] Elderly or Disabled Member." WSR 11-24-028, § 388-470-0005, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0005, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0005, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 23-06-039, filed 2/23/23, effective 3/26/23)

**WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance?** (1) We count the following resources toward your assistance unit's resource limits for cash assistance to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) of this section, including but not limited to:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CD) less any withdrawal penalty;
- (iv) ~~((Available retirement funds or pension benefits less any withdrawal penalty;~~
- ~~(v))~~ Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- ~~((vi))~~ (v) Available trusts or trust accounts;
- ~~((vii))~~ (vi) Lump sum payments as described in chapter 388-455 WAC; and
- ~~((viii))~~ (vii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources;
- (b) The cash surrender value (CSV) of whole life insurance policies;
- (c) The CSV over \$1,500 of revocable burial insurance policies or funeral agreements;
- (d) The amount of a child's irrevocable educational trust fund that is over \$4,000 per child;
- (e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220;
- (f) Any real property like a home, land, or building not specifically excluded in this section;
- (g) The equity value of vehicles as described in WAC 388-470-0070;
- (h) Resources of a sponsor as described in WAC 388-470-0060;
- (i) Sales contracts; and
- (j) Personal property that is not:
  - (i) A household good;
  - (ii) Needed for self-employment; or
  - (iii) Of great sentimental value due to personal attachment or hobby interest.
- (2) The following types of liquid resources do not count when we determine your eligibility:
  - (a) Bona fide loans, including student loans;
  - (b) Basic food benefits;
  - (c) Income tax refunds for 12 months from the date of receipt;
  - (d) Earned income tax credit (EITC) in the month received and for up to 12 months;
  - (e) Advance earned income tax credit payments;
  - (f) Washington's working families tax credit (WFTC);
  - (g) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;
  - (h) Individual development accounts (IDAs) established under RCW 74.08A.220;
  - (i) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a department decision;
  - (j) Underpayments received under chapter 388-410 WAC;
  - (k) Educational benefits that are excluded as income under WAC 388-450-0035;
  - (l) The income and resources of an SSI recipient;
  - (m) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;



- (n) Foster care payments provided under Title IV-E, state foster care maintenance payments, or both;
  - (o) Adoption support payments;
  - (p) All funds in an achieving a better life experience (ABLE) account;
  - (q) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect;
  - (r) Retirement funds or pension benefits; and
  - ~~((r))~~ (s) Resources specifically excluded by federal law.
- (3) The following types of real property do not count when we determine your eligibility:
- (a) Your home and the surrounding property that you, your spouse, or your dependents live in;
  - (b) A house you do not live in, if you plan to return to the home and are out of the home because of:
    - (i) Employment;
    - (ii) Training for future employment;
    - (iii) Illness; or
    - (iv) Natural disaster or casualty;
  - (c) Indian lands held jointly with a tribe or land that can be sold only with the approval of the Bureau of Indian Affairs; and
  - (d) Property that:
    - (i) You are making a good faith effort to sell;
    - (ii) You intend to build a home on, if you do not already own a home;
    - (iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or
    - (iv) A household member needs for employment or self-employment.
- (4) Property excluded under subsection (3)(d)(iv) of this section used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.
- (5) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.
- (6) If you sell your home, you have 90 days to reinvest the sale proceeds into an exempt resource.
- (7) If you do not reinvest within 90 days, we will determine whether there is good cause to allow more time. If we determine you have good cause, we will give you more time based on your circumstances. If you do not have good cause, we will count your sale proceeds as a resource. Some examples of good cause include:
- (a) Closing on your new home is taking longer than anticipated;
  - (b) You are unable to find a new home that you can afford;
  - (c) Someone in your household is receiving emergent medical care;
  - (d) Your children are in school and moving would require them to change schools.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.300, 74.04.510, 74.08.090, 74.08A.120, and 82.08.0206. WSR 23-06-039, § 388-470-0045, filed 2/23/23, effective 3/26/23. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and 74.04.300. WSR 17-17-097, § 388-470-0045, filed 8/18/17, effective 9/18/17. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-470-0045, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Crea-

tion Act of 2010. WSR 11-21-025, § 388-470-0045, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.08.090 and ARRA of 2009, Public Law 111-5, Section 5006(b); 42 C.F.R. 435.601, EEOICPA of 2000, Public Law 106398, Sec. 1, app., Title XXXVI (Oct. 30, 2000) (section 1 adopting as Appendix H.R. 5408), Section 3646 of the Appendix. WSR 10-15-069, § 388-470-0045, filed 7/16/10, effective 8/16/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 74.08.090. WSR 09-09-103, § 388-470-0045, filed 4/20/09, effective 4/21/09. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0045, filed 2/7/03, effective 3/1/03; WSR 99-16-024, § 388-470-0045, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0045, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 19-01-105, filed 12/18/18, effective 2/1/19)

**WAC 388-470-0070 How vehicles are counted toward the resource limit for cash assistance.** (1) A vehicle is any device for carrying persons and objects by land, water, or air.

(2) The entire value of a licensed vehicle needed to transport a physically disabled assistance unit member is excluded.

(3) The ((equity)) entire value of one vehicle ((up to 10,000 dollars)) is excluded when the vehicle is used by the assistance unit or household as a means of transportation.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 19-01-105, § 388-470-0070, filed 12/18/18, effective 2/1/19. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-470-0070, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.08.090, 74.08A.100, 74.09.080, and 74.09.415. WSR 02-17-030, § 388-470-0070, filed 8/12/02, effective 9/12/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0070, filed 7/31/98, effective 9/1/98. Formerly WAC 388-506-0610.]

## WSR 23-20-097

## PROPOSED RULES

## EASTERN WASHINGTON UNIVERSITY

[Filed October 2, 2023, 3:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-083.

Title of Rule and Other Identifying Information: Student conduct code, chapter 172-121 WAC.

Hearing Location(s): On November 27, 2023, at 12:00 p.m., at 215A Tawanka Commons, Cheney, WA 99004.

Date of Intended Adoption: December 8, 2023

Submit Written Comments to: Annika Scharosch, 211 Tawanka [Commons], Cheney, WA 99004, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), website <https://inside.ewu.edu/policies>, by November 27, 2023.

Assistance for Persons with Disabilities: Contact Annika Scharosch, phone 509-359-6724, email [ascharosch@ewu.edu](mailto:ascharosch@ewu.edu), by November 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates Eastern Washington University's student conduct code. Adds options for adaptable dispute resolution. Updates the definitions of assault and threats.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Statute Being Implemented: RCW 28B.10.902.

Rule is necessary because of federal court decision, *Counterman v. Colorado*, United States Supreme Court decision on June 27, 2023.

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Annika Scharosch, 211 Tawanka Commons, Cheney, WA 99004, 509-359-6724; Implementation and Enforcement: Dr. Shari McMahan, 214 Showalter Hall, Cheney, WA 99004, 509-359-6200.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not subject to RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 2, 2023

Annika Scharosch

Associate Vice

President for Civil Rights, Compliance

and Enterprise Risk Management

OTS-4997.1

AMENDATORY SECTION (Amending WSR 23-11-109, filed 5/19/23, effective 6/19/23)

**WAC 172-121-100 Complaints. (1) Filing of complaints.**

(a) Any person or the university may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities ([www.inside.ewu.edu/srr](http://www.inside.ewu.edu/srr)); or

(ii) Title IX coordinator ([www.inside.ewu.edu/titleix](http://www.inside.ewu.edu/titleix)).

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is pursuing a student conduct case on its own behalf, an EWU employee shall initiate the complaint. For Title IX complaints, a complaint must either be filed by the person subject to the alleged misconduct or by the Title IX coordinator. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.

(2) **Complaint review.** Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of sexual misconduct or interpersonal violence, may lead to suspension or expulsion and/or felony level criminal conduct to determine which student conduct process applies and if appropriate law enforcement or other authorities should be notified. If a complaint falls within such categories, it shall be referred to a hearing under WAC 172-121-122. For all other complaints, the director may determine whether or not to dismiss the complaint, refer the matter to adaptable dispute resolution under WAC 172-121-102, or refer the matter for a brief or full hearing.

(3) **Sexual misconduct and interpersonal violence proceedings.** Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct or interpersonal violence regardless of the possible level of sanction or whether there is a formal Title IX complaint.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct or interpersonal violence to the university Title IX coordinator within 24 hours.

(b) Title IX complaints. The Title IX coordinator will determine whether or not the allegation of sexual misconduct or interpersonal violence constitutes a Title IX complaint under this code. Solely in cases of Title IX complaints, the university will not move forward with initiating a Title IX investigation or student conduct hearing unless a formal complaint from the person alleged to have been subjected to sexual misconduct or interpersonal violence or a complaint from the Title IX coordinator requesting initiation of the student conduct process has been received.

The Title IX coordinator is responsible for determining whether or not the allegations constitute a formal Title IX complaint. If al-

legations include sexual misconduct or interpersonal violence but do not meet the definition of a Title IX complaint, the Title IX coordinator will inform the complainant and the respondent that the complaint is not considered a Title IX complaint and the reasons it does not fit within the required elements of a formal Title IX complaint. If the complainant or respondent disagrees with the Title IX coordinator's decision, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision. The dean of students can affirm, reverse, or remand the Title IX coordinator's decision and such decision must be communicated in writing simultaneously to the parties.

SRR may proceed, however, with pursuing a student conduct case against the respondent for misconduct outside of Title IX including, but not limited to, sexual misconduct or interpersonal violence that does not fit the definition of a Title IX complaint.

(c) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct or interpersonal violence when it is legally required to do so. The university's goal is to have complaints of sexual misconduct or interpersonal violence resolved within 90 days. If the university needs additional time, the investigator or director of SRR should provide written notice to the complainant and respondent of the delay and the reasons for the delay. Delays and extensions beyond the 90 days must be based on good cause.

(d) Investigations.

(i) Sexual misconduct and interpersonal violence. The university will investigate complaints of sexual misconduct and interpersonal violence, including Title IX complaints, and may, at its discretion, ask for an investigation of other alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. The investigator will contact the complainant, respondent, and other witnesses to ask questions and gather relevant evidence. Parties may be assisted by an advisor during the investigative process. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. Prior to any investigatory interview regarding a Title IX complaint, the investigator will provide written notice of the meeting with the date, time, location, participants, and purpose with sufficient time for the person to prepare to participate in the interview.

Prior to the completion of the investigative report for a Title IX complaint, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least 10 calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least 10 days prior to any hearing or other determination of responsibility. In cases of sexual misconduct or interpersonal violence, a copy of the report must also be provided to the parties for their review and written response.

(ii) Other types of conduct. The director may request an investigation for other types of alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. An investigation may be completed by a single investigator or team of investigators. The investigator will contact the complainant, if applicable, respondent, and other witnesses to ask questions and gather relevant evidence. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence gathered during the investigation. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR.

(e) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants. Files subject to public disclosure will be released to the extent required by law.

(f) Right to file a criminal report. Once the university is notified of an allegation of sexual misconduct or interpersonal violence that could constitute a crime, it will notify the potential complainant of their right to file a criminal complaint with campus or local law enforcement. If the complainant in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the complainant that they are not required to file a report with local law enforcement. The university will report allegations of sexual misconduct or interpersonal violence to law enforcement or other authorities when it is required to do so under federal, state, and local law.

(4) **Supportive measures and interim restrictions.** During the complaint review, the director of SRR or Title IX coordinator will review whether any supportive measures or interim restrictions are needed. Supportive measures and interim restrictions are addressed in WAC 172-121-140.

(5) **SRR will follow up with the parties as described below.**

(a) The director of SRR will contact the respondent, and the complainant in cases of sexual misconduct or interpersonal violence, and provide them with the following information:

(i) The respondent's and complainant's rights under the student conduct code;

(ii) A summary of the allegations the complainant has against the respondent;

(iii) The potential conduct code violations related to the allegations; and

(iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging sexual misconduct or interpersonal violence, the director of SRR will, in addition to the information specified under (a) of this subsection, provide both parties with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

**(6) Following the complaint review, the director of SRR will either dismiss the matter, refer it to adaptable dispute resolution, or arrange a prehearing conference.**

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, they may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of sexual misconduct or interpersonal violence or for a Title IX complaint, the complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within seven business days of receiving notice of the dismissal.

(b) Adaptable dispute resolution. The director may refer the complaint to the adaptable dispute resolution process contained in WAC 172-121-102.

(c) Prehearing conference. If the director of SRR does not dismiss the matter they will arrange a prehearing conference as described in WAC 172-121-110 unless a respondent is opting to admit responsibility under WAC 172-121-118.

[Statutory Authority: RCW 28B.35.120(12). WSR 23-11-109, § 172-121-100, filed 5/19/23, effective 6/19/23; WSR 23-01-027, § 172-121-100, filed 12/9/22, effective 1/9/23; WSR 21-01-102, § 172-121-100, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-100, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-100, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-100, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-100, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-100, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-100, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-100, filed 5/20/09, effective 6/20/09.]

#### NEW SECTION

**WAC 172-121-102 Adaptable dispute resolution.** (1) A CRO or their designee may resolve a matter by agreement. Agreements may be reached directly or through an adaptable dispute resolution process. Adaptable dispute resolution includes various processes of voluntary, structured facilitation between impacted parties aimed to balance support and accountability. Examples of adaptable dispute resolution include, but are not limited to, restorative justice circles, restorative justice conferences, negotiation, facilitated dialogues, impact panels, and mediation. The various types of adaptable dispute resolution available at the university and the procedures for resolution are available on student rights and responsibilities' website.

(2) When resolution of a matter is reached by agreement or an adaptable dispute resolution process, the agreement must be in writing and signed by the parties and the conduct officer or designee. In the agreement, the parties must be advised in writing that:

(a) The disposition is final and they are waiving any right to a hearing on the matter, including any right to appeal; and

(b) If a student does not successfully complete all aspects of an agreement, they may be charged with the following violations of the student conduct code:

(i) Failure to comply; and

(ii) Any possible alleged conduct code violations from the initial incident or case that was reported to the SRR office. Failure to abide by the terms of the agreement will be considered a violation of the student conduct code.

(3) If any party decides to leave the adaptable dispute resolution process or the CRO or designee determines it is no longer appropriate, then the matter shall be referred back to the director to determine the next steps under WAC 172-121-100.

[ ]

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

**WAC 172-121-140 Supportive measures and interim restrictions.**

(1) Supportive measures. During the complaint review, the director of



SRR, Title IX coordinator, or designee will evaluate the circumstances and determine if any supportive measures to assist or protect the parties during the conduct code process are needed. For sexual misconduct and interpersonal violence cases, supportive measures are available before or after the filing of a complaint or where no formal complaint is filed. Supportive measures are provided to students free of charge and may include, but are not limited to, safety planning with the university, mutual restrictions on contact between the parties, academic or workplace modifications, providing counseling for the complainant and/or respondent, or campus housing modifications. The purpose of a supportive measure is to provide an equitable process for both students that minimizes the possibility of a hostile environment on campus. For Title IX complaints, supportive measures are designed to restore or preserve equal access to the university's educational programs or activities without unreasonably burdening either party, including protecting the safety of all parties and the university's educational environment, or deterring sexual harassment. Supportive measures in cases of sexual misconduct and interpersonal violence are coordinated by the Title IX coordinator or designee.

(2) Interim restrictions. For Title IX complaints, in situations where there is cause to believe that a student or a student organization poses an immediate threat to the physical health or safety of any student or other individual, including themselves, the Title IX coordinator in conjunction with the director of SRR may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing.

Simultaneous with such action(s), the director of SRR will refer the allegations to the conduct review officer, who will process such allegations in accordance with the provisions of this student conduct code.

For all non-Title IX cases, the director may take immediate action(s) against the student or student organization after conducting an individualized safety and risk analysis without prior notice or hearing. Simultaneously, the director shall refer the allegations to the conduct review officer. For non-Title IX cases, interim restriction is subject to the following:

(a) Interim restriction actions may only be imposed in the following situations:

(i) When a student or student organization poses an immediate threat to:

(A) The physical health or safety of any student or any other individual;

(B) The student's own physical safety and well-being; or

(C) Any property of the university community; or

(ii) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community.

(b) During the interim restriction period, a student may be restricted by any or all of the following means:

(i) Denial of access including, but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(ii) Interim suspension, including temporary total removal from the university or restriction of access to campus. For Title IX complaints, a student may only be placed on interim suspension if, after conducting an individualized safety and risk analysis, the director determines the person poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct or interpersonal violence;

(iii) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The director of SRR will determine what restriction(s) will be placed on a student.

(4) The director of SRR will prepare a brief memorandum for record containing the reasons for the interim restriction. The director will serve the memorandum on the restricted student and notify all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) could constitute a violation of the student conduct code;

(c) How the circumstances of the case necessitated the interim restriction action(s); and

(d) An explanation of the process for emergency appeal reviews.

(5) Notice to complainant. In cases alleging sexual misconduct or interpersonal violence, the complainant will be provided with notice of any interim restrictions that relate directly to the complainant. If the respondent appeals such interim restrictions, the complainant will be given notice of the respondent's appeal and an opportunity to submit a statement within five business days of the notice as to why the interim restriction should or should not be modified.

(6) Emergency appeal review.

(a) If a student has been suspended on an interim basis, the student will automatically receive an emergency appeal review with the vice president for student affairs, or designee. If the interim restriction is something less than a suspension, the student or student organization subject to the interim restriction must file a written appeal with the vice president for student affairs within five business days after service of the interim restriction. In all cases, the student must submit any information the student wishes the vice president to consider submitted within (~~ten~~) 10 business days after service of the interim restriction. The appealing party should outline the desired modification(s) to the interim restriction as well as the specific challenge(s) to the interim restriction decision. Challenges to interim restriction decisions are limited to the criteria identified in WAC 172-121-140(1) upon which the interim restriction was imposed (threat to health or safety of the university community, potential for creating campus disorder, impeding the lawful activity of others, etc.). Appealing parties are limited to submitting their own written statements. Any other evidence should be submitted to the investigator or provided to the CRO under the regular hearing process.

(b) The vice president for student affairs, or designee, will conduct an emergency appeal review after receiving the respondent's review and complainant's response, if any. Emergency appeal reviews will address only the interim restriction decision of the director and the basis on which the restriction modification or termination is requested by the appealing party. The emergency appeal review does not replace the regular hearing process. In the emergency appeal review,

the vice president will only review materials available to and information considered by the director and/or dean of students at the time the interim restriction was imposed, written statements by the two parties, and information that becomes available as a part of the university's investigation that the vice president deems relevant.

(c) In cases alleging sexual misconduct or interpersonal violence, if a complainant believes the interim restriction does not adequately protect their health and safety, the complainant may appeal the interim restriction using the process outlined in this subsection. If the complainant files an appeal, all parties shall be given notice of the appeal and shall be provided the opportunity to submit a written statement to the vice president within five business days of receiving notice of the complainant's appeal.

(d) During the emergency appeal review, the vice president for student affairs will review available materials and statements. The vice president for student affairs will issue a written decision upholding, modifying, or terminating the interim restriction action. The written decision shall include a rationale for the basis of the decision and be issued within (~~fifteen~~) 15 business days of the date of service of an interim restriction.

(e) The interim restriction does not replace the regular hearing process, which will proceed as quickly as feasible consistent with this chapter.

(f) Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council, CRO, or the vice president for student affairs.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-01-102, § 172-121-140, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-140, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-140, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-140, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-140, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-140, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-140, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-140, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 23-01-027, filed 12/9/22, effective 1/9/23)

**WAC 172-121-302 Abuse, threats, bullying, and harassment. (1)**

Abuse. Assault and other forms of physical abuse. Assault is intentionally touching or striking another person in a harmful or offensive way.

(2) Threats. A threat is any conduct (~~or statement~~) and/or speech that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of another person. If the threat primarily involves speech, the speaker also must have consciously disregarded a substantial, unjustifiable risk that the communications could be viewed as threatening violence.

(3) Bullying. Bullying is behavior that is:

(a) Intentional;

(b) Targeted at an individual or group; and

(c) Creates an intimidating and/or threatening environment that is so severe or pervasive, and objectively offensive, that it substantially interferes with another's ability to work, study, participate in, or benefit from the university's programs and activities.

(4) Discriminatory harassment. Physical, verbal, electronic, or other conduct based on an individual's race, color, religion, national origin, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, citizenship or immigration status, disability, or veteran status when one of the conditions outlined in subsection (3)(a) or (b) of this section are present:

(a) Submission to, or rejection of such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or

(b) Such conduct creates a hostile environment. A hostile environment is created when the conduct is sufficiently severe or pervasive, and objectively offensive, that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities. Unreasonable interference is viewed from both a subjective and objective standard.

[Statutory Authority: RCW 28B.35.120(12). WSR 23-01-027, § 172-121-302, filed 12/9/22, effective 1/9/23.]

**WSR 23-20-098**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed October 2, 2023, 4:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-133.

Title of Rule and Other Identifying Information: Judicial retirement benefit multiplier.

Hearing Location(s): On November 8, 2023, at 3:00 p.m., via Microsoft Teams, <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 233 538 457 951, Passcode W6uT45; or by phone 833-322-1218, Code 153 557 242#.

Date of Intended Adoption: November 13, 2023.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by November 6, 2023.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by November 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify the requirements of the judicial benefit multiplier (JBM) program including, but not limited to, membership, contribution rates, and benefits calculation.

Reasons Supporting Proposal: DRS administers the JBM program for all elected and appointed judges in Washington state, and this program provides a higher benefit multiplier to these judges. The legislature passed the JBM laws in 2006, and DRS is doing rule making to provide necessary clarity and specificity regarding these requirements.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 2.14.115, 41.32.581, 41.32.584, 41.32.587, 41.40.124, 41.40.127, 41.40.404, 41.40.408, 41.40.760, 41.40.763, 41.40.767, 41.40.770, 41.40.870, 41.40.873, 41.40.877, 41.40.880, 41.45.200, 41.45.203, 41.45.207.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5) (a) (i) does not apply to this proposed rule and DRS is not voluntarily making it applicable to the agency.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

October 2, 2023  
Bianca Stoner  
Rules Coordinator

OTS-4626.1

NEW SECTION**WAC 415-02-385 Judicial benefit multiplier actuarial factors.**

If you are a justice of the Washington supreme court or a judge in the court of appeals, superior court, district court, or municipal court and are an eligible member of the public employees' retirement system Plans 1, 2, or 3, you may purchase an increase on the benefit multiplier on past judicial service credit earned before becoming a judicial benefit multiplier (JBM) program member. The cost formula for purchasing the increase is equal to five percent of your salary earned for each month of increase, plus five and one-half percent annual interest, accumulated monthly, or the actuarial cost, whichever is less. See WAC 415-108-350.

(1) **How does the department use the judicial benefit multiplier actuarial factors?** The department uses the judicial benefit multiplier actuarial factors to determine the actuarial equivalent value of the increase to the benefit resulting from the higher benefit multiplier. The factor is based on the age of the member at the time the bill for the higher benefit multiplier is created. For more information about the JBM program, please see WAC 415-108-350.

(2) **What is the actuarial calculation to increase the benefit multiplier on past judicial service credit?** The actuarial formula to determine the cost to increase past judicial service to the higher benefit multiplier is:

$$\text{Months to Increase} \times \text{Average Final Compensation} \times 12 \times \text{Actuarial Factor} = \text{Cost}$$

(3) **JBM actuarial factor table.** The actuarial factor table is available on the DRS website at [www.drs.wa.gov](http://www.drs.wa.gov).

[]

OTS-4627.2

NEW SECTION**WAC 415-108-350 What is the judicial benefit multiplier program?**

(1) **Who is included in the judicial benefit multiplier program?** The judicial benefit multiplier (JBM) program provides a higher benefit multiplier to public employees' retirement system (PERS) members who serve as Washington supreme court justices or judges in the court of appeals, superior court, district court, or municipal court.

(2) **What is a benefit multiplier?** In this section, "multiplier" is the percentage component used, with average final compensation (AFC) and years of service credit, in the calculation of a retirement benefit.

(a) **Plan 1 and 2 members:** Your multiplier will be three and one-half percent. This means you will receive three and one-half percent of your AFC for each year of service credit you earn under the JBM program.

(b) **Plan 3 members:** Your multiplier will be one and six-tenths percent. This means you will receive one and six-tenths percent of your AFC for each year of service credit you earn under the JBM program.

(c) **Plan 1, Plan 2, and Plan 3 members:** Your multiplier for service not earned as a justice or judge will be determined by your retirement plan. See subsection (10) of this section.

(3) **Can I participate in the judicial benefit multiplier program?** You can participate in the JBM program if:

(a) You chose to be a member. If you were a PERS member in judicial service on December 31, 2006, and remained in judicial service on January 1, 2007, you had the opportunity to choose to participate in the JBM program during the open window from January 1, 2007, through December 31, 2007; or

(b) You are required to participate in the JBM program if you entered PERS membership as a justice or judge on or after January 1, 2007. If you have not previously established PERS membership, you will be mandated into PERS Plan 2. If your current term began prior to your entry into the JBM program, you must purchase service credit from the beginning of your term at the JBM program rate.

(4) **Can I be excluded from participating in the judicial benefit multiplier program?**

(a) You cannot participate in the JBM program if you are in judicial service employed by the City of Seattle, Tacoma, or Spokane.

(b) If you were a PERS member in judicial service on December 31, 2006, and remained in judicial service on January 1, 2007, and did not choose to participate in the JBM program during the election window, you cannot participate in the program even if you are subsequently elected or appointed in a judicial position after December 31, 2007.

(c) You do not qualify for the JBM program if you are a court commissioner or were a judicial officer of a board or commission.

(5) **What are the member contribution rates in the judicial benefit multiplier program?**

(a) If you serve as a Washington supreme court justice or judge in the court of appeals or superior court, your contribution rate will be:

(i) Plan 1: The contribution rate established under RCW 41.40.330 plus three and seventy-six one-hundredths percent (Plan 1 rate + 3.76%).

(ii) Plan 2: Two hundred fifty percent of the current PERS Plan 2 member contribution rate, less two and one-half percent (250% x Plan 2 rate - 2.5%).

(iii) Plan 3: A minimum of seven and one-half percent (7.5%) to your defined contribution account.

(b) If you serve as a district court or municipal court judge, your contribution rate will be:

(i) Plan 1: The contribution rate established under RCW 41.40.330 plus six and twenty-six one-hundredths percent (Plan 1 rate + 6.26%).

(ii) Plan 2: Two hundred fifty percent of the current PERS Plan 2 member contribution rate (250% x Plan 2 rate).

(iii) Plan 3: A minimum of seven and one-half percent (7.5%) to your defined contribution account.

(6) **What is the employer contribution rate in the judicial benefit multiplier program?**

(a) If you serve as a supreme court justice or court of appeals or superior court judge, your employer will pay the employer contribution rate in effect for your plan plus two and one-half percent of

your compensation earnable. See RCW 41.40.010 for the definition of "compensation earnable."

(b) If you serve as a district court or municipal court judge, your employer will pay the employer contribution rate in effect for your plan.

(7) **Will my retirement benefit be capped in the judicial benefit multiplier program?** Yes, if you are in the JBM program your retirement benefit will be capped depending on your plan.

(a) **Plan 1 and Plan 2 members.** Your total PERS monthly retirement benefit, including the service credit you earn in the JBM program and the service credit you earned prior to and subsequent to participating in this program, may not exceed 75 percent of your AFC.

(b) **Plan 3 members.** Your total PERS monthly retirement benefit, including the service credit you earn in the JBM program and the service credit you earned prior to and subsequent to participating in this program, may not exceed 37.5 percent of your AFC.

(c) **Portability retirements.** Your total monthly benefit will be calculated per RCW 41.54.070(2) to combine the benefits from both retirement systems.

(8) **May I choose to not participate in the judicial benefit multiplier program after I have made the election to participate?** No, your decision to participate in the JBM program is permanent.

(9) **May I join membership in DRS and not participate in the judicial benefit multiplier program?** No, if you are an elected official in a judicial position and choose to join membership in PERS in this elected position you will be required to also be in the judicial benefit multiplier program. If you are in a nonelected judicial position and the employment is eligible for membership you will be required to be in the judicial benefit multiplier program.

(10) **What if I am in the judicial benefit multiplier program and I have service credit that does not qualify for the higher multiplier?** If you earn credit for service other than as a justice or a judge, the formulas in RCW 41.40.185, 41.40.620, or 41.40.790 will apply to that portion of service credit. Your retirement benefit will be calculated using the appropriate multiplier for the type of service credit and retirement plan.

**Example:** John is in PERS Plan 1 and has 20 years of service credit and an AFC of \$10,000. John earned 10 years of service credit as a prosecuting attorney and 10 years of service credit as a District Court judge in the JBM program. John's retirement benefit is \$5,500 calculated as:

(Prosecuting attorney service credit) 2% × 10 years × \$10,000	=	\$2,000
(District Court judge service credit) 3.5% × 10 years × \$10,000	=	\$3,500
<b>Total retirement benefit</b>	<b>=</b>	<b>\$5,500</b>

(11) **As a judicial benefit multiplier member, may I have the higher multiplier applied to prior service credit?** If you elected to participate in the JBM program, you may purchase the higher multiplier to be applied to prior judicial service credit. You may choose to have the higher multiplier applied to all, some, or none of your qualifying service credit. Only the service credit you earned as a justice or judge is eligible for the higher multiplier.

(12) **How do I have the higher multiplier applied to past judicial service credit?** If you elected to participate in the JBM program, you may request to increase the multiplier. The following rules apply:



(a) You may request to increase the multiplier when you apply for retirement.

(b) Your retirement date must be July 1, 2008, or later.

(c) You can only increase any remaining eligible months of past judicial service that have not already been increased.

(d) The cost formula is equal to five percent of your salary earned for each month of increase plus five and one-half percent annual interest, accumulated monthly. However, if the actuarial cost for increasing the selected number of past judicial service months is less, you will pay the lesser amount. The cost will be determined beginning with the salary for the latest judicial month being increased.

(e) The number of months you choose to increase cannot be an amount that would cause your retirement benefit to exceed:

(i) Plan 1 and Plan 2: Seventy-five percent of your AFC.

(ii) Plan 3: Thirty-seven and one-half percent of your AFC.

(f) The higher multiplier for the service credit chosen will be applied to your retirement benefit calculation following full payment of your bill. The increase to your retirement benefit will be retroactive to your effective retirement date.

(g) You must pay your bill within 90 days of the date of the bill.

(h) You may make your payment:

(i) With an eligible rollover, a direct rollover, or a trustee-to-trustee transfer from an eligible retirement plan such as your deferred compensation account or JRA; or

(ii) With a personal check, cashier's check, or money order. Refer to Internal Revenue Service regulations for potential tax implications related to payments made with after-tax dollars.

**(13) If I participate in the judicial benefit multiplier program, may I also contribute to a judicial retirement account?** If you participate in the JBM program, you and your employer cannot contribute to judicial retirement account (JRA). If you have a JRA account, your funds will remain in your account until you terminate employment. However, you may use your JRA funds to pay the cost of applying the higher multiplier to past service credit according to subsection (12) of this section.

**(14) How will a survivor option be applied on my retirement benefit under the judicial benefit multiplier program?** Your monthly retirement benefit will be reduced by the appropriate survivor option factor (SOF) after your benefit is capped.

**Example:** Mary is in PERS Plan 3 and has 27 years of service in the JBM program and an AFC of \$10,000. Mary elected survivor option 2 for her spouse, who is two years older. The SOF for option 2 is 0.843. Mary's retirement benefit is capped at 37.5% of her AFC. Mary's monthly retirement benefit is \$3,161 calculated as:

$$1.6\% \times 27 \text{ years (43.2\%)} \times \$10,000 = \$4,320$$

$$\text{Capped at } 37.5\% \times \$10,000 = \$3,750$$

$$\$3,750 \times 0.843 = \$3,161$$

**(15) If I die prior to retirement, can my survivor choose to increase past judicial service to the higher multiplier to use in the calculation of a survivor benefit?** If you die prior to retirement, your survivor may not choose to increase your past judicial service to a higher multiplier. However, any JBM service earned or past judicial service that you increase to the higher multiplier prior to your death will be used in the calculation of the retirement benefit.

**(16) May I participate in both the post 30-year program and the judicial benefit multiplier program if I am in PERS Plan 1?**

(a) If you opted into the post 30-year program under the provisions of RCW 41.40.191 before becoming a participant in the JBM program, your post 30-year contributions will stop when you begin contributing to the JBM program. The balance in your post 30-year contribution account will continue to accrue interest and will be available for refund at retirement. Contributions made under the JBM program will not be available for refund at your retirement including any contributions made on leave cash outs.

(b) You will not be eligible to enter the post 30-year program if you participate in the JBM program.

**(17) How will my benefit be calculated if I am a participant in both the post-30 year program and the judicial benefit multiplier program?** If you are a member of both the post 30-year program and the JBM program, your benefit will have two parts. The first part will include the benefit you earned under the post 30-year program, and the second part will include the additional amount you earned under the JBM program. The two parts, added together, will provide you with one retirement benefit.

(a) The AFC determined when you opted into the post 30-year program will apply to the post 30-year part of your retirement benefit, and a different AFC, based on your JBM program service, will be used for the part of your retirement benefit earned under the JBM program.

(b) Your total retirement benefit cannot exceed 75 percent of the AFC used to determine the JBM part of your benefit.

(c) Leave cash outs allowed to be used in determining your AFC will be included in both AFCs used to calculate each part of your retirement benefit.

**(18) If I am a member of PERS Plan 2 in the judicial benefit multiplier program, can I transfer to PERS Plan 3?**

(a) If you are a PERS Plan 2 JBM member who had transfer rights as provided under RCW 41.40.795 prior to entering the JBM program, you will still have the option to transfer to Plan 3 during the annual January open window.

(b) If you have never been a PERS member and are mandated into PERS Plan 2 under the JBM program, you will not have the option to transfer to Plan 3. See subsection (3) of this section.

**(19) If I transfer to Plan 3 and have paid to increase prior judicial service credit to the higher multiplier under Plan 2, what happens to my payment?** The payment you made to increase the benefit multiplier on prior judicial service will be split: Forty percent of your payment will be transferred into the Plan 3 defined benefit trust fund; and 60 percent of your payment will be transferred into your Plan 3 defined contribution account and will be available for you to manage.

**(20) How will an early retirement reduction factor (ERF) be applied if I retire early?** If you retire early according to the provisions for your retirement plan, an ERF will be applied to your total retirement benefit before the cap is applied.

**Example 1:** John is in PERS Plan 2 under the JBM program and has 27 years of judicial service. John decides to retire at age 63 which is two years before age 65. John's AFC at the time of retirement is \$10,000 and the ERF for retiring two years early is 0.805. John's monthly retirement benefit is \$7,500 calculated as:

$$3.5\% \times 27 \text{ years} \times \$10,000 = \$9,450 \times 0.805 = \$7,607.25$$

Capped at 75% of \$10,000 = \$7,500.00

(21) **If I retire for disability, how will my benefit be capped?** Your benefit will be capped at 75 percent of your AFC. If an ERF is applied, it will be applied according to subsection (20) of this section.

**Example:** Susan is in PERS Plan 1 under the JBM program. She has 22 years of judicial service and is age 52. Susan becomes disabled and retires three years before normal retirement. Her disability was not duty-related so she retires under the nonduty disability retirement provisions for PERS Plan 1. Susan's AFC at retirement is \$10,000 and the ERF for retiring three years early is 0.754. Susan's nonduty disability retirement benefit is \$5,806 calculated as:

$$3.5\% \times 22 \text{ years} \times \$10,000 = \$7,700 \times 0.754 = \$5,806$$

(22) **If I participate in the judicial benefit multiplier program, may I purchase additional service credit when I retire?** Yes, if you participate in the JBM program you may purchase additional service credit when you retire under RCW 41.40.034. The amount you receive due to the purchase of service credit is in addition to your retirement benefit. See WAC 415-02-177.

(23) **If I participate in the judicial benefit multiplier program, what multiplier will I receive on service credit if I work part-time in judicial service and part-time in nonjudicial service for the same employer?** The multiplier you receive on service credit will depend on whether you earned the service credit before or after becoming a JBM program member.

(a) **For service earned after becoming a JBM program member,** all service earned during a month will be reported at the JBM program contribution rate and will receive the higher multiplier.

(b) **For service earned before becoming a JBM program member,** any month that you worked in judicial service and nonjudicial service may be increased to the higher multiplier.

(24) **If I participate in the judicial benefit multiplier program, what multiplier will I receive on service credit if I work part-time in judicial service for one employer and part-time in nonjudicial service for a different employer?** Each employer will report your compensation and hours according to the rules for the position you are working in for that employer. The rules for earning service credit are the same for JBM program members, both before entering the JBM program and while in the JBM program, as for non-JBM program members. The department will combine the hours reported by each employer to determine the total service credit earned each month. After the amount of service credit earned has been totaled, the portion of the service credit that will receive the higher multiplier credit in JBM will be determined as follows:

(a) If you are a Plan 1, Plan 2, or Plan 3 member and your judicial position is statewide elected, you will receive the higher multiplier for a full month of service credit for any month compensation is reported for your judicial position, regardless of hours reported.

(b) If you are in PERS Plan 1 and your judicial position is locally elected or the governor appoints you to judicial service, you will receive the higher multiplier for a full month of service credit for any month compensation is reported for your judicial position, regardless of hours reported.

(c) For all other JBM program members, the following charts provide examples of how much of the service credit will receive the higher multiplier and how much will receive the regular multiplier.

**Plan 1 JBM Program Members  
Locally Appointed Positions**

Reported Hours		Total Service Credit Earned	Service Credit Distribution	
JBM	Non-JBM		JBM	Non-JBM
1.0	80.0	1.0	.50	.50
60.0	60.0	1.0	.50	.50
60.0	30.0	1.0	.50	.50
30.0	70.0	1.0	.50	.50
70.0	70.0	1.0	1.0	0
5.0	30.0	.25	.25	0

**Plans 2 and 3 JBM Program Members  
Locally Elected, Governor or Locally Appointed Positions**

Reported Hours		Total Service Credit Earned	Service Credit Distribution	
JBM	Non-JBM		JBM	Non-JBM
5.0	30.0	.25	.25	0
1.0	80.0	.50	.25	.25
80.0	1.0	.50	.50	0
40.0	40.0	.50	.25	.25
60.0	60.0	1.0	.50	.50
112.0	40.0	1.0	1.0	0
72.0	112.0	1.0	.50	.50
60.0	30.0	1.0	.50	.50
30.0	70.0	1.0	.50	.50
70.0	30.0	1.0	.50	.50

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**OTS-4628.2**

NEW SECTION

**WAC 415-112-160 Judicial benefit multiplier program teachers' retirement system Plan 1.** (1) **What is the judicial benefit multiplier program?** The judicial benefit multiplier (JBM) program provides a higher benefit multiplier to teachers' retirement system (TRS) Plan 1 members who serve as supreme court justices or judges in the court of appeals or superior court.

(2) **What is a benefit multiplier?** In this section, "multiplier" is the percentage component used, with average final compensation (AFC) and years of service credit, in the calculation of a retirement benefit. Your multiplier will be three and one-half percent. This means you will receive three and one-half percent of your AFC for each year of service credit you earn under the JBM program.

**(3) Can I participate in the judicial benefit multiplier program?**

You can participate in the JBM program if you are a supreme court justice or judge in the court of appeals or superior court and:

(a) You chose to be a member. If you were a TRS Plan 1 member in judicial service on December 31, 2006, and remained in judicial service on January 1, 2007, you had the opportunity to choose to participate in the JBM program during the open window from January 1, 2007, through December 31, 2007; or

(b) You are required to participate in the JBM program. If you entered TRS Plan 1 membership as a justice or a judge on or after January 1, 2007. If your current term began prior to your entry into the JBM program, you must purchase service credit from the beginning of your term at the JBM program rate; or

(c) If you were previously a TRS Plan 1 member and withdrew your contributions when you separated from employment, and you were then elected to judicial service on or after January 1, 2007, you may choose to become a member of PERS Plan 2 (unless you have prior PERS membership then you would become a member of that plan). If you choose to become a PERS member, you will be required to join the JBM program. Once you have established or reestablished your PERS membership, you may restore your withdrawn TRS contributions plus interest. If you choose to restore in TRS, you would then return to TRS Plan 1 membership and earn service credit prospectively under the JBM program as a TRS Plan 1 member. Any service you earned in PERS will remain in PERS and you would be a dual member.

**(4) What is the member contribution rate in the judicial benefit multiplier program?** Your contribution rate will be 12.26 percent of your earnable compensation. See RCW 41.45.203.

**(5) What is the employer contribution rate in the judicial benefit multiplier program?** Your employer will pay the employer contribution rate in effect for your plan.

**(6) Will my retirement benefit be capped in the judicial benefit multiplier program?** Yes, your total TRS monthly retirement benefit, including the service credit you earned in the JBM program and the service credit you earned prior to and subsequent to participating in this program, may not exceed 75 percent of your AFC.

Portability retirements. Your total monthly benefit will be calculated per RCW 41.54.070(2) to combine the benefits from both retirement systems.

**(7) May I choose to not participate in the judicial benefit multiplier program after I have made the election to participate?** No, your decision to participate in the JBM program is permanent.

**(8) May I join membership in DRS and not participate in the judicial benefit multiplier program?** No, if you are an elected official in a judicial position and choose to join membership in PERS in this elected position you will be required to also be in the judicial benefit multiplier program. If you are in a nonelected judicial position and the employment is eligible for membership you will be required to be in the judicial benefit multiplier program.

**(9) What if I am in the judicial benefit multiplier program and I have service credit that does not qualify for the higher multiplier?** Your retirement benefit will be calculated using the appropriate multiplier for the type of service credit and retirement plan in which it was earned. If you earn credit for service other than as a justice or a judge, the formulas in RCW 41.32.498 will apply to that portion of service credit.

**Example:** William is in TRS Plan 1 and has 20 years of service credit and an AFC of \$10,000. William earned 10 years of service credit as an administrator for a school district and 10 years of service credit as a superior court judge in the JBM program. William's retirement benefit would be:

(Administrator service credit) $2\% \times 10 \text{ years} (20\%) \times \$10,000$	=	\$2,000
(Superior Court judge service credit) $3.5\% \times 10 \text{ years} (35\%) \times \$10,000$	=	\$3,500
<b>Total retirement benefit</b>	<b>=</b>	<b>\$5,500</b>

(10) **As a judicial benefit multiplier member, may I have the higher multiplier applied to prior service credit?** If you elected to participate in the JBM program, you may purchase the higher multiplier to be applied to prior judicial service credit. You may choose to have the higher multiplier applied to all, some, or none of your qualifying service credit. Only the service credit you earned as a justice or judge is eligible for the higher multiplier.

(11) **How do I have the higher multiplier applied to past judicial service credit?** If you elected to participate in the JBM program, you may request to increase the multiplier. The following rules apply:

(a) You may request to increase the multiplier when you apply for retirement.

(b) Your retirement date must be July 1, 2008, or later.

(c) You can only increase any remaining eligible months of past judicial service that have not already been increased.

(d) The cost formula is equal to five percent of your salary earned for each month of increase plus five and one-half percent annual interest, accumulated monthly. However, if the actuarial cost for increasing the selected number of past judicial service months is less, you will pay the lesser amount. The cost will be determined beginning with the salary for the latest judicial month being increased.

(e) The number of months you choose to increase cannot be an amount that would cause your retirement benefit to exceed 75 percent of your AFC.

(f) The higher multiplier for the service credit chosen will be applied to your retirement benefit calculation following full payment of your bill. The increase to your retirement benefit will be retroactive to your effective retirement date.

(g) You must pay your bill within 90 days of the date of the bill.

(h) You may make your payment:

(i) With an eligible rollover, a direct rollover, or a trustee-to-trustee transfer from an eligible retirement plan such as your deferred compensation account or judicial retirement account (JRA); or

(ii) With a personal check, cashier's check, or money order. Refer to Internal Revenue Service regulations for potential tax implications related to payments made with after-tax dollars.

(12) **If I participate in the judicial benefit multiplier program, may I also contribute to a judicial retirement account?** You and your employer will no longer contribute to your JRA, and your funds will remain in your account until you terminate employment. However, you may use your JRA funds to pay the cost of applying the higher multiplier to past service credit according to subsection (10) of this section.

(13) **How would a survivor option be applied on my retirement benefit under the judicial benefit multiplier program?** Your monthly re-

tirement benefit will be reduced by the appropriate survivor option factor (SOF) after your benefit is capped.

**Example:** Mary is in TRS Plan 1 and has 27 years of service in the JBM program and has an AFC of \$10,000. Mary elected a survivor option 2 for her spouse, who is two years older. The SOF for option 2 is 0.918. Mary's retirement benefit is capped at 75% of her AFC. Mary's monthly retirement benefit is \$6,885 calculated as:

$$\begin{aligned} 3.5\% \times 27 \text{ years} &= 94.5\% \times \$10,000 = \$9,450 \\ \text{Capped at 75\% of } \$10,000 &= \$7,500 \\ \$7,500 \times 0.918 &= \$6,885 \end{aligned}$$

(14) **If I die prior to retirement, can my survivor choose to increase past judicial service to the higher multiplier to use in the calculation of a survivor benefit?** If you die prior to retirement, your survivor may not choose to increase your past judicial service to a higher multiplier. However, any JBM service earned or past judicial service that you increase to the higher multiplier prior to your death will be used in the calculation of the retirement benefit.

(15) **May I participate in both the post 30-year program and the judicial benefit multiplier program?**

(a) If you opted into the post 30-year program under the provisions of RCW 41.32.4986 before becoming a participant in the JBM program, your post 30-year contributions will stop when you become a JBM program participant and begin contributions to the JBM program. The balance in your post 30-year contribution account will continue to accrue interest and will be available for refund at retirement. Contributions made under the JBM program will not be available for refund at your retirement including any contributions made on leave cash outs.

(b) You will not be eligible to enter the post 30-year program if you already participate in the JBM program.

(16) **How will my benefit be calculated if I am a participant in both the post 30-year program and the judicial benefit multiplier program?** If you are a member of both the post 30-year program and the JBM program, your benefit will have two parts. The first part will include the benefit you earned under the post 30-year program, and the second part will include the additional amount you earned under the JBM program. The two parts, added together, will provide you with one retirement benefit.

(a) The AFC determined when you opted into the post 30-year program will apply to the post 30-year part of your retirement benefit, and a different AFC, based on your JBM program service, will be used for the part of your retirement benefit earned under the JBM program.

(b) Your total retirement benefit cannot exceed 75 percent of the AFC used to determine the JBM part of your benefit.

(c) Leave cash outs allowed to be used in determining your AFC will be included in both AFCs used to calculate each part of your retirement benefit.

(17) **If I retire for disability, how will my benefit be capped?** Your benefit will be capped at 75 percent of your AFC.

(18) **If I participate in the judicial benefit multiplier program, may I purchase additional service credit when I retire?** Yes, you may purchase service credit under the provision of RCW 41.32.066. The amount you receive due to the purchase of service credit is in addition to your retirement benefit. See WAC 415-02-177.

(19) **How will an annuity withdrawal at retirement be applied to my benefit in the judicial benefit multiplier program?** Your monthly

retirement benefit is the sum of a pension portion and an annuity portion. The annuity portion of your benefit is determined by your age at retirement and the amount of contributions and interest in your retirement account. You may withdraw some or the entire annuity portion of your benefit. If you decide to withdraw all or part of the annuity portion, your benefit will be reduced by the annuity amount withdrawn.

**Example:** Vicky retires at age 60 with 20 years of service credit, an AFC of \$10,000, and total contributions of \$175,000. The annuity factor for age 60 is .0079310, so the value of the annuity portion of her benefit would be \$1,388 (\$175,000 × .0079310). Vicky earned 10 years of service credit as an administrator for a school district and 10 years of service credit as a Superior Court judge in the JBM program. If Vicky did not withdraw any of the annuity portion, her maximum monthly retirement benefit would be \$5,500 calculated as:

(Administrator service credit) 2% × 10 years (20%) × \$10,000	=	\$2,000
(Superior Court judge service credit) 3.5% × 10 years (35%) × \$10,000	=	\$3,500
<b>Total retirement benefit</b>	=	<b>\$5,500</b>

If Vicky withdrew the entire annuity portion of her benefit, her maximum monthly retirement benefit would be \$4,112 calculated as:

Total maximum retirement benefit	=	\$5,500
Less annuity portion	=	\$1,388
<b>Total maximum retirement benefit</b>	=	<b>\$4,112</b>

If the uncapped benefit exceeds 75 percent, the reduction for the annuity withdrawal would be applied to the capped benefit amount.

**Example:** Brad retires at age 62 with 30 years of service credit, an AFC of \$10,000 and total contributions of \$200,000. The annuity factor for age 62 is .0081703 so the value of the annuity portion of Brad's benefit would be \$1,634 (\$200,000 × .0081703). Brad earned 15 years of service credit as a principal for a school district and 15 years of service credit as a Superior Court judge in the JBM program. His maximum retirement benefit would be \$5,866 calculated as:

(Principal service credit) 2% × 15 years (30%) × \$10,000	=	\$3,000
(Superior Court judge service credit) 3.5% × 15 years (52.5%) × \$10,000	=	\$5,250
Uncapped benefit	=	\$8,250
Capped at 75% × \$10,000	=	\$7,500
<b>Total capped retirement benefit</b>	=	<b>\$7,500</b>
Less annuity portion	=	-\$1,634
<b>Total maximum retirement benefit</b>	=	<b>\$5,866</b>

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**WSR 23-20-099**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed October 3, 2023, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-087.

Title of Rule and Other Identifying Information: Payout of paid sick leave to certain construction workers following separation. Amending and creating new sections in chapter 296-128 WAC.

Hearing Location(s): On November 7, 2023, at 1:00 p.m., at the Department of Labor and Industries (L&I), Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501-5414; and on November 8, 2023, at 10:00 a.m., virtual/telephonic hearing. Join electronically [https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F%23%2F1%2Fmeetup-join%2F19%3Ameeting\\_NmU4ZjkwM2MtNTMzNS00ZGMwLTk3ZDMtMTM0MjEzZTVjNGJk%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%25220id%2522%253a%2522e18fd12a-9e7e-4c79-aecl-650ebada958d%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=b7a40e8f-a7f6-43ab-acc5-dd7f61cccf45](https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F%23%2F1%2Fmeetup-join%2F19%3Ameeting_NmU4ZjkwM2MtNTMzNS00ZGMwLTk3ZDMtMTM0MjEzZTVjNGJk%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%25220id%2522%253a%2522e18fd12a-9e7e-4c79-aecl-650ebada958d%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=b7a40e8f-a7f6-43ab-acc5-dd7f61cccf45), Meeting ID 255 978 387 565, Passcode ffh4Sf; or join by phone (audio only) 253-372-2181, 168865313#, Phone Conference ID 168 865 313#. The hearings will begin at the time indicated and will continue until all oral comments are received.

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join%2F19%3Ameeting\_NmU4ZjkwM2MtNTMzNS00ZGMwLTk3ZDMtMTM0MjEzZTVjNGJk%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%25220id%2522%253a%2522e18fd12a-9e7e-4c79-aecl-650ebada958d%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=b7a40e8f-a7f6-43ab-acc5-dd7f61cccf45, Meeting ID 255 978 387 565, Passcode ffh4Sf; or join by phone (audio only) 253-372-2181, 168865313#, Phone Conference ID 168 865 313#. The hearings will begin at the time indicated and will continue until all oral comments are received.

Date of Intended Adoption: November 21, 2023.

Submit Written Comments to: Bridget Osborne, L&I, Fraud Prevention and Labor Standards, Employment Standards, P.O. Box 44510, Olympia, WA 98504-4510, email [ESRules@Lni.wa.gov](mailto:ESRules@Lni.wa.gov), fax 360-902-5300, by November 9, 2023, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Bridget Osborne, phone 360-902-5552, email [ESRules@Lni.wa.gov](mailto:ESRules@Lni.wa.gov), by November 1, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state legislature passed ESSB 5111, chapter 267, Laws of 2023, which amends RCW 49.46.210 and 49.46.180 to require payment for accrued and unused sick leave for certain construction workers.

The proposed rules are needed to clarify and enforce the new requirements. Additional rules are needed to address existing statutory requirements in RCW 49.46.180, as well as general cleanups of the paid sick leave rules.

This rule making proposes to create new rule sections and amend existing rules.

Reasons Supporting Proposal: Rules are needed to clarify and enforce the new requirements. Additional rules are needed to address existing statutory requirements in RCW 49.46.180, as well as general cleanups of the paid sick leave rules.

Statutory Authority for Adoption: Chapter 49.46 RCW.

Statute Being Implemented: RCW 49.46.210 and 49.46.180.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Bridget Osborne, Tumwater, Washington, 360-902-5552; Enforcement: Bryan Templeton, Tumwater, Washington, 360-902-5310.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt under RCW 34.05.328 (5)(b)(iii), adopts requirements from RCW 49.46.210 and 49.46.180 without material change; and RCW 34.05.328 (5)(b)(iv), clarifies language without changing the effect.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The rule making is fully exempt under RCW 34.05.310 (4)(c), adopting statute without material change; and RCW 34.05.310 (4)(d), correcting or clarifying language without changing its effect.

Scope of exemption for rule proposal:  
Is fully exempt.

October 3, 2023  
Joel Sacks  
Director

## OTS-4970.2

AMENDATORY SECTION (Amending WSR 17-21-092, filed 10/17/17, effective 1/1/18)

**WAC 296-128-010 Records required.** For all employees who are subject to RCW 49.46.020, employers shall be required to keep and preserve payroll or other records containing the following information and data with respect to each and every employee to whom said section of said act applies:

(1) Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same name as that used for Social Security record purposes;

(2) Home address;

(3) Occupation in which employed;

(4) Date of birth if under ((eighteen)) 18;

(5) Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day

and beginning day of the workweek for the whole workforce or establishment will suffice. If, however, any employee or group of employees has a workweek beginning and ending at a different time, a separate notation shall then be kept for that employee or group of employees;

(6) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" shall be any consecutive (~~twenty-four~~) 24 hours);

(7) Total daily or weekly straight-time earnings or wages; that is, the total earnings or wages due for hours worked during the workday or workweek, including all earnings or wages due during any overtime worked, but exclusive of overtime excess compensation;

(8) Total overtime excess compensation for the workweek; that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings or wages also earned during overtime worked;

(9) Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain a record of the dates, amounts, and nature of the items which make up the total additions and deductions;

(10) Total wages paid each pay period;

(11) Date of payment and the pay period covered by payment;

(12) Paid sick leave accruals each month, and any unused paid sick leave available for use by an employee;

(13) Paid sick leave reductions each month including, but not limited to: Paid sick leave used by an employee, paid sick leave donated to a co-worker through a shared leave program, or paid sick leave not carried over to the following year ("year" as defined in WAC 296-128-620(6));

(14) Paid sick leave payments to construction workers before usage as provided under RCW 49.46.180, and any remaining leave which remains after payment;

(15) The date of commencement of his or her employment, as defined in WAC 296-128-600(2);

~~((15))~~ (16) Employer may use symbols where names or figures are called for so long as such symbols are uniform and defined;

(17) Paid sick leave paid out to a construction worker following separation from employment; and

(18) Any date(s) of separation from employment, as defined in WAC 296-128-600(14).

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-010, filed 10/17/17, effective 1/1/18; Regulation 294.7.001 (part), filed 12/30/60.]

AMENDATORY SECTION (Amending WSR 17-21-092, filed 10/17/17, effective 1/1/18)

**WAC 296-128-600 Definitions.** (1) "Absences exceeding three days" means absences exceeding three consecutive days an employee is required to work. For example, assume an employee is required to work on Mondays, Wednesdays, and Fridays, and then the employee uses paid sick leave for any portion of those three work days in a row. If the employee uses paid sick leave again on the following Monday, the employee would have absences exceeding three days.

(2) "Commencement of his or her employment" as provided in RCW 49.46.210 (1)(d), means no later than the beginning of the first day on which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace. "Commencement of their employment" has the same meaning.

(3) "Construction worker" is any nonexempt employee covered under the 2022 North American Industry Classification System (NAICS) industry code 23, except for those employees who perform only work described in NAICS 2361, residential building construction. This includes employees who work for an employer who perform construction-related work as described in NAICS 23, but are not directly engaged in the construction work itself, such as nonexempt administrative staff.

(4) "Construction worker covered by a collective bargaining agreement" as provided in RCW 49.46.180, means a nonexempt employee covered by a collective bargaining agreement, provided that the union signatory to the collective bargaining agreement is an approved referral union program authorized under RCW 50.20.010 and in compliance with WAC 192-210-110, the collective bargaining agreement establishes equivalent sick leave provisions, as provided in RCW 49.46.180(2), and the requirements of RCW 49.46.200 through 49.46.830 are expressly waived in the collective bargaining agreement in clear and unambiguous terms or in an addendum to an existing agreement including an agreement that is open for negotiation provided the sick leave portions were previously ratified by the membership. This does not include employees who perform construction as described in NAICS 23, but are not directly engaged in construction work itself, such as nonexempt administrative staff.

(5) "Department" means the department of labor and industries.

~~((4))~~ (6) "Director" means the director of the department of labor and industries, or the director's authorized representative.

~~((5))~~ (7) "Employee" has the same meaning as RCW 49.46.010(3). An employee includes a construction worker or construction worker covered by a collective bargaining agreement unless a more specific provision applies.

~~((6))~~ (8) "Employer" has the same meaning as RCW 49.46.010(4).

~~((7))~~ (9) "Frontloading" means providing an employee with paid sick leave before it has accrued at the rate required by RCW 49.46.210 (1)(a).

~~((8))~~ (10) "Health-related reason," as provided in RCW 49.46.210 (1)(b)(iii), means a serious public health concern that could result in bodily injury or exposure to an infectious agent, biological toxin, or hazardous material. Health-related reason does not include closures for inclement weather.

~~((9))~~ (11) "Hours worked" shall be interpreted in the same manner as WAC 296-126-002(8).

~~((10))~~ (12) "Normal hourly compensation" means the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. For employees who use paid sick leave for hours that would have been overtime hours if worked, employers are not required to apply overtime standards to an employee's normal hourly compensation. Normal hourly compensation does not include tips, gratuities, service charges, holiday pay, or other premium rates, unless the employer or a collective bargaining agreement allow for such considerations. However, where an employee's normal hourly compensation is a differential rate, meaning a different rate paid for the same work performed under differing conditions (e.g., a night shift), the differential rate is not a premium rate.

~~((11))~~ (13) "Regular and normal wage" has the same meaning as normal hourly compensation.

~~((12))~~ (14) "Separation" and "separates from employment" mean the end of the last day an employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace.

~~((13))~~ (15) "Verification" means evidence that establishes or confirms that an employee's use of paid sick leave is for an authorized purpose under RCW 49.46.210 (1)(b) and (c).

~~((14))~~ (16) "Workweek" means a fixed and regularly recurring period of ~~((one hundred sixty-eight))~~ 168 hours, or seven consecutive ~~((twenty-four))~~ 24 hour periods. It may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-600, filed 10/17/17, effective 1/1/18.]

AMENDATORY SECTION (Amending WSR 17-21-092, filed 10/17/17, effective 1/1/18)

**WAC 296-128-630 Paid sick leave usage.** (1) An employee is entitled to use paid sick leave for the authorized purposes outlined in RCW 49.46.210 (1)(b) and (c). This right means an employee has the choice about whether or not to use accrued, unused paid sick leave when a qualified purpose occurs and an employer may not require an employee to use accrued, unused paid sick leave if the employee does not choose to request to use paid sick leave.

(2) An employee is entitled to use accrued, unused paid sick leave beginning on the ~~((ninetieth))~~ 90th calendar day after the commencement of his or her employment. Employers may allow employees to use accrued, unused paid sick leave prior to the ~~((ninetieth))~~ 90th calendar day after the commencement of his or her employment.

(3) Beginning on the ~~((ninetieth))~~ 90th calendar day after the commencement of ~~((his or her))~~ their employment, employers must make accrued paid sick leave available to employees for use in a manner consistent with the employer's established payment interval or leave records management system, not to exceed one month after the date of accrual.

(4) Unless a greater increment is approved by a variance as provided by WAC 296-128-640, employers must allow employees to use paid sick leave in increments consistent with the employer's payroll system and practices, not to exceed one hour. For example, if an employer's normal practice is to track increments of work for the purposes of compensation in ~~((fifteen))~~ 15-minute increments, then an employer must allow employees to use paid sick leave in ~~((fifteen))~~ 15-minute increments.

(5) Paid sick leave pay may be paid to construction workers under a collective bargaining agreement before the usage of the leave under the terms of a collective bargaining agreement if an employer meets the requirements of RCW 49.46.180 and any applicable rules.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-630, filed 10/17/17, effective 1/1/18.]

AMENDATORY SECTION (Amending WSR 17-21-092, filed 10/17/17, effective 1/1/18)

**WAC 296-128-670 Rate of pay for use of paid sick leave.** (1) For each hour of paid sick leave used, an employee must be paid the greater of the minimum hourly wage rate established by RCW 49.46.020 or their normal hourly compensation.

(2) For each hour of paid sick leave paid out to a construction worker following separation, the construction worker must be paid the greater of the minimum hourly wage rate established by RCW 49.46.020 or their normal hourly compensation.

(3) An employer must calculate an employee's normal hourly compensation using a reasonable calculation based on the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. Examples of reasonable calculations to determine normal hourly compensation include, but are not limited to:

(a) For an employee paid partially or wholly on a commission basis, dividing the total earnings by the total hours worked in the full pay periods in the prior (~~ninety~~) 90 days of employment;

(b) For an employee paid partially or wholly on a piece rate basis, dividing the total earnings by the total hours worked in the most recent workweek in which the employee performed identical or substantially similar work to the work they would have performed had they not used paid sick leave;

(c) For a nonexempt employee paid a salary, dividing the annual salary by (~~fifty-two~~) 52 to determine the weekly salary, and then dividing the weekly salary by the employee's normal scheduled hours of work;

(d) For an employee whose hourly rate of pay fluctuates:

(i) Where the employer can identify the hourly rates of pay for which the employee was scheduled to work, a calculation equal to the scheduled hourly rates of pay the employee would have earned during the period in which paid sick leave is used;

(ii) Where the employer cannot identify the hourly rates of pay for which the employee would have earned if the employee worked, a calculation based on the employee's average hourly rate of pay in the current or preceding (~~thirty~~) 30 days, whichever yields the higher hourly rate.

(~~3~~) (4) For employees who are scheduled to work a shift of indeterminate length (e.g., a shift that is defined by business needs rather than a specific number of hours), the rate of pay may be calculated by multiplying the employee's normal hourly compensation by the total hours worked by a replacement employee in the same shift, or similarly situated employees who worked that same or similar shift. If there is no replacement employee to compare to, the employer may use the average number of hours the employee using the paid sick leave typically works during a similar shift.

(5) Construction workers under a collective bargaining agreement who are paid before the usage of the leave under the terms of a collective bargaining agreement should be paid their normal hourly compensation. Unless addressed in a collective bargaining agreement, the payment should reflect a reasonable calculation of the normal hourly compensation based on the date of payment.

(~~4~~) (6) An employer must apply a consistent methodology when calculating the normal hourly compensation of similarly situated employees.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-670, filed 10/17/17, effective 1/1/18.]

AMENDATORY SECTION (Amending WSR 17-21-092, filed 10/17/17, effective 1/1/18)

**WAC 296-128-680 Payment of paid sick leave.** (1) Unless verification for absences exceeding three days is required by an employer, the employer must pay paid sick leave to an employee no later than the payday for the pay period in which the paid sick leave was used by the employee. If verification is required by the employer, paid sick leave must be paid to the employee no later than the payday for the pay period during which verification is provided to the employer by the employee.

(2) The employer must pay the balance of accrued and unused paid sick leave to a construction worker under RCW 49.46.210 (1)(1) (effective January 1, 2024), at the end of the established pay period, pursuant to RCW 49.48.010(2), following the construction worker's separation.

(3) Payment of paid sick leave at the normal hourly compensation to construction workers under a collective bargaining agreement may occur before usage, as authorized by RCW 49.46.180 and applicable rules.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-680, filed 10/17/17, effective 1/1/18.]

AMENDATORY SECTION (Amending WSR 17-21-092, filed 10/17/17, effective 1/1/18)

**WAC 296-128-690 Separation and reinstatement of accrued paid sick leave upon rehire.** Except as provided for construction workers by RCW 49.46.210 (1)(1) (effective January 1, 2024) and applicable rules, and provided for construction workers under collective bargaining agreements by RCW 49.46.180 and applicable rules:

(1) When an employee separates from employment and is rehired within (~~twelve~~) 12 months of separation by the same employer, whether at the same or a different business location of the employer, the employer must comply with the provisions of RCW 49.46.210 (1)(k). If an employee separates from employment, the employer is not required to provide financial or other reimbursement to the employee for accrued, unused paid sick leave at the time of separation.

(2) An employer may choose to reimburse an employee for any portion of their accrued, unused paid sick leave at the time the employee separates from employment.

(a) If an employer chooses to reimburse an employee for any portion of their accrued, unused paid sick leave at the time the employee separates from employment, any such terms for reimbursement must be mutually agreed upon in writing by both the employer and the employee, unless the right to such reimbursement is set forth elsewhere in state law or through a collective bargaining agreement.

(b) If an employee is rehired by the same employer, whether at the same or a different business location of the employer, within ~~((twelve))~~ 12 months after the date the employee separates from employment, the employer must reinstate the employee's previously accrued, unused paid sick leave. An employer need not reinstate any hours of paid sick leave previously provided to the employee through financial or other reimbursement at the time of separation, as long as the value of the paid sick leave was established and paid at a rate that was at least equal to the employee's normal hourly compensation.

(3) When an employee separates from employment and the employee is rehired within ~~((twelve))~~ 12 months of separation by the same employer, whether at the same or a different business location of the employer, an employee who reached the ~~((ninetieth))~~ 90th calendar day of employment prior to separation shall have their previously accrued, unused paid sick leave balance available for use upon rehire. If the employee did not reach the ~~((ninetieth))~~ 90th calendar day of employment prior to separation, the previous period of employment must be counted for purposes of determining the date upon which the employee is entitled to use paid sick leave.

(4) Upon rehire, an employer must provide notification to the employee of the amount of accrued, unused paid sick leave available for use by the employee.

(5) If the period of time an employee separates from employment extends into the following year ("year" as defined at WAC 296-128-620(6)), the employer is not required to reinstate more than ~~((forty))~~ 40 hours of the employee's accrued, unused paid sick leave.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-690, filed 10/17/17, effective 1/1/18.]

AMENDATORY SECTION (Amending WSR 17-21-092, filed 10/17/17, effective 1/1/18)

**WAC 296-128-700 Paid time off (PTO) programs.** (1) A PTO program is a program that combines more than one type of leave, including all paid sick leave, into one bank of leave (i.e., a program that combines vacation leave, or other discretionary forms of leave, and paid sick leave into one bank). Paid time off (PTO) provided to employees by an employer's PTO program ~~((e.g., a program that combines vacation leave, sick leave, or other forms of leave into one pool), created by a written policy or a collective bargaining agreement,))~~ satisfies the requirement to provide paid sick leave if:

(a) The PTO program meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules((r)) including, but not limited to:

~~((a))~~ (i) Accrual of PTO leave at a rate of not less than one hour for every ~~((forty))~~ 40 hours worked as an employee;

~~((b))~~ (ii) Payment for PTO leave at the ~~((employee's))~~ greater of the minimum hourly wage rate established by RCW 49.46.020 or the normal hourly compensation;

~~((c))~~ (iii) Carryover of at least ~~((forty))~~ 40 hours of accrued, unused PTO leave to the following year ("year" as defined at WAC 296-128-620(6));



~~((d))~~ (iv) Access to ((use)) all PTO leave in the bank on the same terms for all the purposes authorized under RCW 49.46.210 (1)(b) and (c) except as provided in subsection (2) of this section; ((and (e) Employer notification and) (v) Recordkeeping requirements set forth in WAC 296-128-010 and ((296-128-760) 296-128-755; and (b) The employer notifies the employee of their intention to utilize the PTO program in order to meet paid sick leave requirements under RCW 49.46.210.

(2) An employer may include more generous PTO (leave in excess of the accrual requirements) that is not subject to RCW 49.46.200 and 49.46.210, and all applicable rules, in the same leave bank as state paid sick leave compliant with RCW 49.46.200 and 49.46.210, and all applicable rules if:

(a) The compliant sick leave meets all the requirements of subsection (1) of this section independently of any more generous leave provided under an employer policy or CBA;

(b) The compliant paid sick leave is tracked separately;

(c) There is no requirement for the employee to use their protected leave for more generous purposes (purposes not authorized under RCW 49.46.210 (1)(b) and (c), such as vacation leave) before accessing the more generous PTO leave for more generous purposes; and

(d) If there is no policy that encourages the employee to use their protected leave for more generous purposes (purposes not authorized under RCW 49.46.210 (1)(b) and (c), such as vacation leave) before accessing the more generous PTO leave for more generous purposes.

(3) If an employee chooses to use their PTO leave for purposes other than those authorized under RCW 49.46.210 (1)(b) and (c), and the need for use of paid sick leave later arises when no additional PTO leave is available, the employer is not required to provide any additional PTO leave to the employee as long as the employer's PTO program meets or exceeds the provisions of RCW 49.46.200 and 49.46.210, and all applicable rules.

(4) If an employer utilizes a PTO program to meet or exceed the provisions of RCW 49.46.200 and 49.46.210 for construction workers, the balance of the PTO must be paid out to any qualifying workers covered under RCW 49.46.210 (1)(1) (effective January 1, 2024), following separation.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-700, filed 10/17/17, effective 1/1/18.]

AMENDATORY SECTION (Amending WSR 17-21-092, filed 10/17/17, effective 1/1/18)

**WAC 296-128-730 Frontloading.** (1) An employer may, but is not required to, frontload paid sick leave to an employee in advance of accrual. An employer that allows an employee to go into "negative balances" of paid sick leave (i.e., where paid sick leave has not accrued and the employer allows its use on the condition the employee will work additional hours to make up the difference) is frontloading paid sick leave to the employee.

(2) If an employer frontloads paid sick leave, the employer must ensure that such frontloaded paid sick leave complies with the provisions of RCW 49.46.180, 49.46.200, and 49.46.210, and all applicable rules.

(3) If an employer frontloads paid sick leave, the employer must do so by using a reasonable calculation, consistent with the accrual requirement set forth under RCW 49.46.210 (1)(a), to determine the amount of paid sick leave the employee would be projected to accrue during the period of time for which paid sick leave is being frontloaded.

(a) If the employer calculates and frontloads, and an employee subsequently uses, an amount of paid sick leave which exceeds the paid sick leave the employee would have otherwise accrued absent frontloading, the employer shall not seek reimbursement from the employee for such paid sick leave used during the course of ongoing employment.

(b) If an employer frontloads paid sick leave to an employee, but such frontloaded paid sick leave is less than the amount the employee was entitled to accrue under RCW 49.46.210 (1)(a), the employer must make such additional amounts of paid sick leave available for use by the employee as soon as practicable, but no later than (~~thirty~~) 30 days after identifying the discrepancy.

(4) The employer must have a written policy or a collective bargaining agreement which addresses the requirements for use of frontloaded paid sick leave. An employer must notify employees of such policy or agreement prior to frontloading an employee paid sick leave, and must make this information readily available to all employees.

(5) An employer may not make a deduction from an employee's final wages for frontloaded paid sick leave used prior to the accrual rate required by RCW 49.46.210 (1)(a), unless there is a specific agreement in place with the employee allowing for such a deduction. Such deductions must also meet the requirements set forth in RCW 49.48.010 and WAC 296-126-025.

(6) If an employer frontloads paid sick leave to a construction worker under RCW 49.46.210 (1)(1) (effective January 1, 2024) and the construction worker separates from employment, the employer must pay the balance of frontloaded leave in the construction worker's bank unless the employer can determine the amount of unused paid sick leave the employee accrued during the period of time for which paid sick leave was frontloaded using a reasonable calculation consistent with the accrual requirement set forth under RCW 49.46.210 (1)(a).

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-730, filed 10/17/17, effective 1/1/18.]

AMENDATORY SECTION (Amending WSR 17-21-092, filed 10/17/17, effective 1/1/18)

**WAC 296-128-740 Third-party administrators.** (1) Employers may contract with a third-party administrator in order to administer the paid sick leave requirements under RCW 49.46.180, 49.46.200, and 49.46.210, and all applicable rules.

(2) Employers are not relieved of their obligations under RCW 49.46.200 and 49.46.210, and all applicable rules, if they elect to contract with a third-party administrator to administer paid sick leave requirements. With the consent of employers, third-party administrators may pool an employee's accrued, unused paid sick leave from multiple employers as long as the accrual rate is at least equal to one hour of paid sick leave for every (~~forty~~) 40 hours worked as an employee. For example, if a group of employers have employees who per-

form work for various employers at different times, the employers may choose to contract with a third-party administrator to track the hours worked and rate of accrual for paid sick leave for each employee, and pool such accrued, unused paid sick leave for use by the employee when the employee is working for any employers in the same third-party administrator network.

(3) A collective bargaining agreement may outline the provisions for an employer to use a third-party administrator as long as such provisions meet all paid sick leave requirements under RCW 49.46.180, 49.46.200, and 49.46.210, and all applicable rules.

(4) An employer may utilize a third-party administrator in order to meet separation payout requirements under RCW 49.46.210 (1)(1) (effective January 1, 2024) and applicable rules.

(5) Under the terms of a collective bargaining agreement, an employer may meet its obligation to meet separation payout requirements under RCW 49.46.210 (1)(1) (effective January 1, 2024) and applicable rules by providing the third-party administrator a payment of any accrued unused leave, including regular payments meant to satisfy paid sick leave payment requirements. The third-party administrator may maintain a leave balance the employee may access after the separation of employment subject to the terms of the collective bargaining agreement.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-740, filed 10/17/17, effective 1/1/18.]

#### NEW SECTION

**WAC 296-128-755 Employer notification and reporting to employees.** (1) Employers must notify each employee of their entitlement to paid sick leave, the rate at which the employee will accrue paid sick leave, the authorized purposes under which paid sick leave may be used, the employer's intention to use a PTO program to meet requirements under RCW 49.46.210 (if applicable), and that retaliation by the employer for the employee's lawful use of paid sick leave and other rights provided under chapter 49.46 RCW, and all applicable rules, is prohibited.

(a) Employers must provide such notification in written or electronic form, and must make this information readily available to all employees.

(b) For employees hired on or after January 1, 2018, employers must notify each employee of such rights no later than the commencement of their employment. For existing employees as of January 1, 2018, the employer must notify each employee no later than March 1, 2018.

(c) The department shall, in consultation with employee and employer representatives, develop sample notification policies that meet the department's standard for compliance with these rules. The department shall make such sample notification policies available on the department's website.

(2) Not less than monthly, employers must provide each employee with written or electronic notification detailing the amount of paid sick leave accrued, the amount of paid sick leave paid before usage to construction workers under a collective bargaining agreement as permissible under RCW 49.46.180, the paid sick leave reductions since the

last notification, and any unused paid sick leave available for use by the employee. Employers may satisfy the notification requirements by providing this information in regular payroll statements.

(a) Employers are not required to provide monthly notification to an employee if the employee has no hours worked since the last notification.

(b) If an employer chooses to frontload paid sick leave to an employee in advance of accrual:

(i) The employer must make written or electronic notification to an employee no later than the end of the period for which the frontloaded paid sick leave was intended to cover, establishing that the amount of paid sick leave frontloaded to the employee was at least equal to the accrual rate under RCW 49.46.210 (1)(a); and

(ii) The employer is not relieved of their obligation to provide notification, not less than monthly, of the paid sick leave available for use by the employee.

[ ]

AMENDATORY SECTION (Amending WSR 17-21-092, filed 10/17/17, effective 1/1/18)

**WAC 296-128-760 (~~Employer notification and reporting to employees~~) Construction workers under a collective bargaining agreement under RCW 49.46.180.** (~~(1) Employers must notify each employee of their entitlement to paid sick leave, the rate at which the employee will accrue paid sick leave, the authorized purposes under which paid sick leave may be used, and that retaliation by the employer for the employee's lawful use of paid sick leave and other rights provided under chapter 49.46 RCW, and all applicable rules, is prohibited.~~

~~(a) Employers must provide such notification in written or electronic form, and must make this information readily available to all employees.~~

~~(b) For employees hired on or after January 1, 2018, employers must notify each employee of such rights no later than the commencement of his or her employment. For existing employees as of January 1, 2018, the employer must notify each employee no later than March 1, 2018.~~

~~(c) The department shall, in consultation with employee and employer representatives, develop sample notification policies which meet the department's standard for compliance with these rules. The department shall make such sample notification policies available on the department's website.~~

~~(2) Not less than monthly, employers must provide each employee with written or electronic notification detailing the amount of paid sick leave accrued and the paid sick leave reductions since the last notification, and any unused paid sick leave available for use by the employee. Employers may satisfy the notification requirements by providing this information in regular payroll statements.~~

~~(a) Employers are not required to provide monthly notification to an employee if the employee has no hours worked since the last notification.~~

~~(b) If an employer chooses to frontload paid sick leave to an employee in advance of accrual:~~

~~(i) The employer must make written or electronic notification to an employee no later than the end of the period for which the frontloaded paid sick leave was intended to cover, establishing that the amount of paid sick leave frontloaded to the employee was at least equal to the accrual rate under RCW 49.46.210 (1)(a); and~~

~~(ii) The employer is not relieved of their obligation to provide notification, not less than monthly, of the paid sick leave available for use by the employee.)~~

(1) RCW 49.46.180 allows a construction worker covered by a collective bargaining agreement to receive payment for paid sick leave before usage under the terms of a collective bargaining agreement if:

(a) The leave itself becomes available for protected use by at least the 90th calendar day of employment as established in RCW 49.46.210 (1)(d);

(b) The union signatory to the collective bargaining agreement is an approved referral union program authorized under RCW 50.20.010 and WAC 192-210-110;

(c) The collective bargaining agreement provides equivalent sick leave provisions that meet the requirements of RCW 49.46.200 through 49.46.830, and all applicable rules; and

(d) The requirements of RCW 49.46.200 through 49.46.830 are expressly waived in the collective bargaining agreement in clear and unambiguous terms or in an addendum to an existing agreement including an agreement that is open for negotiation provided the sick leave portions were previously ratified by the membership.

(2) An employer may not make a deduction from paid sick leave payment to a construction worker covered by a collective bargaining agreement before usage or upon separation, unless such deduction meets the requirements set forth in RCW 49.48.010 and WAC 296-126-025.

(3) If a construction worker covered by a collective bargaining agreement is rehired within 12 months after separation from employment by the same employer, whether at the same or a different business location, and was paid their paid sick leave before usage under RCW 49.46.180, and still had protected accrued, unused sick leave available for use, the accrued, unused sick leave must be reinstated for use upon rehire but does not have to be paid when used.

(4) When a construction worker covered by a collective bargaining agreement separates from employment, is rehired within 12 months of separation, whether at the same or a different business location of the employer, and has reached the 90th calendar day of employment prior to separation, the previously accrued, unused sick leave balance must be made available for use upon rehire. If the construction worker covered by a collective bargaining agreement did not reach the 90th calendar day of employment prior to separation, the previous period of employment must be counted for purposes of determining the date upon which the employee is entitled to use sick leave.

(5) Upon rehire, an employer must provide notification to the construction worker covered by a collective bargaining agreement of the amount of accrued, unused paid sick leave available for use by the employee, including sick leave paid before usage.

[Statutory Authority: RCW 49.46.810. WSR 17-21-092, § 296-128-760, filed 10/17/17, effective 1/1/18.]

NEW SECTION

**WAC 296-128-765 Construction workers under RCW 49.46.210 (1) (1) (effective January 1, 2024).** (1) Following separation, employers must pay the balance of accrued and unused paid sick leave to construction workers classified under NAICS code 23, except for construction workers who perform work limited to work only under NAICS code 236100, who have not reached the 90th calendar day of employment.

(2) When a construction worker is rehired within 12 months of separation, whether at the same or a different business location of the employer, the previous period of employment must be counted for purposes of determining the date upon which the employee is entitled to use paid sick leave.

[ ]

AMENDATORY SECTION (Amending WSR 18-01-111, filed 12/19/17, effective 1/1/18)

**WAC 296-128-810 Enforcement—Paid sick leave.** (1) If an employee files a complaint with the department alleging that the employer failed to provide the employee with paid sick leave as provided in RCW 49.46.180, 49.46.200, and 49.46.210, the department will investigate the complaint as an alleged violation of a wage payment requirement, as defined by RCW 49.48.082(12).

(2) When the department's investigation results in a finding that the employer failed to provide the employee with paid sick leave accrual, use, or carryover during an ongoing employment relationship, the employee may elect to:

(a) Receive full access to the balance of accrued paid sick leave hours unlawfully withheld by the employer, based on a calculation of at least one hour of paid sick leave for every (~~forty~~) 40 hours worked as an employee during the period of noncompliance; or

(b) Receive payment from the employer at their normal hourly compensation for each hour of paid sick leave that the employee would have used or been reasonably expected to use, whichever is greater, during the period of noncompliance, not to exceed an amount the employee would have otherwise accrued. The employee will receive full access to the balance of accrued paid sick leave hours unlawfully withheld by the employer, less the number of paid sick leave hours paid out to the employee pursuant to this subsection.

(3) When the department's investigation results in a finding that the employer failed to provide the employee with paid sick leave accrual, use, or carryover, and the employee is no longer employed by the same employer, the employee may elect to receive payment at their normal hourly compensation, receive reinstatement of the balance of paid sick leave hours, or receive a combination of payment and reinstatement from the employer for all hours of paid sick leave that would have accrued during the period of noncompliance. Such hours must be based on a calculation of at least one hour of paid sick leave for every (~~forty~~) 40 hours worked as an employee.

(4) The department's notice of assessment, pursuant to RCW 49.48.083, may order the employer to provide the employee any combination of reinstatement and payment of accrued, unused paid sick leave

hours assessed pursuant to subsection (2) or (3) of this section. When the department's investigation results in a finding that the employer failed to pay the balance of paid sick leave to a construction worker at separation, as required under RCW 49.46.210 (1)(1) (effective January 1, 2024), the department's notice of assessment may order the employer the remainder of any accrued and unused paid sick leave that was not paid out at the time of separation.

(5) For purposes of this section, an employer found to be in non-compliance cannot cap the employee's carryover of paid sick leave at (~~forty~~) 40 hours to the following year for each year of noncompliance ("year" as defined in WAC 296-128-620(6)).

[Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-810, filed 12/19/17, effective 1/1/18.]

AMENDATORY SECTION (Amending WSR 18-01-111, filed 12/19/17, effective 1/1/18)

**WAC 296-128-830 Enforcement—Complaints alleging a violation of other rights under chapter 49.46 RCW—Duty of department to investigate—Citations—Civil penalties.** (1) If an employee files a complaint with the department alleging a violation of the employee's rights under chapter 49.46 RCW, and all applicable rules, that are not otherwise enforced by the department pursuant to WAC 296-128-780 through 296-128-820, or the Wage Payment Act, RCW 49.48.082 through 49.48.087, the department will investigate the complaint under this section. Alleged violations include, but are not limited to, failure of an employer to comply with: The recordkeeping requirements set forth in WAC 296-128-010; the requirements to maintain written policies or collective bargaining agreements, as outlined in WAC 296-128-650(3), 296-128-660(2), 296-128-710(1), and 296-128-730(4); and notification and reporting requirements set forth in WAC 296-128-755 and 296-128-760(5).

(a) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the employee filed the complaint.

(b) If an employee files a timely complaint with the department, the department will investigate the complaint and issue either a citation assessing a civil penalty or a closure letter within (~~sixty~~) 60 days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(c) The department will send notice of a citation assessing a civil penalty or the closure letter to both the employer and the employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(2) If the department's investigation finds that the employee's allegation cannot be substantiated, the department will issue a closure letter to the employee and the employer detailing such finding.

(3) If the department determines that the violation of rights under chapter 49.46 RCW, and all applicable rules, that are not enforced by the department pursuant to WAC 296-128-780 through 296-128-820, or the Wage Payment Act, RCW 49.48.082 through 49.48.087, was a willful violation, and the employer fails to take corrective action, the department may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

(a) A citation assessing a civil penalty for a willful violation of such rights will be ~~((one thousand dollars))~~ \$1,000 for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than ~~((two thousand dollars))~~ \$2,000 for each repeat willful violation, but no greater than ~~((twenty thousand dollars))~~ \$20,000 for each repeat willful violation.

(b) The department may not issue a citation assessing a civil penalty if the employer reasonably relied on:

(i) A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or

(ii) An interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department will maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an employer is immune from civil penalties under (b) of this subsection.

(c) The department may, at any time, waive or reduce a civil penalty assessed under this section if the director determines that the employer has taken corrective action to resolve the violation.

(d) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) For purposes of this section, the following definitions apply:

(a) "Repeat willful violator" means any employer that has been the subject of a final and binding citation for a willful violation of one or more rights under chapter 49.46 RCW, and all applicable rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights.

(b) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

[Statutory Authority: RCW 49.46.810, 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830. WSR 18-01-111, § 296-128-830, filed 12/19/17, effective 1/1/18.]



**WSR 23-20-101**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed October 3, 2023, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-093.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) proposes to amend WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA, and GA-S cash assistance and 388-484-0006 TANF/SFA time limit extensions.

Hearing Location(s): On November 7, 2023, at 10:00 a.m., virtually via Microsoft Teams or call in. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: No earlier than November 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by November 7, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by October 24, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments will remove the 60-month time limit for child-only temporary assistance for needy families and state family assistance households with an ineligible parent, per 2SHB 1447 (chapter 418, Laws of 2023). Related emergency rules are currently in place (effective July 1, 2023) under WSR 23-14-070.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010, and 74.08A.015.

Statute Being Implemented: 2SHB 1447 (chapter 418, Laws of 2023).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Mintzer, P.O. Box 45470, Olympia, WA 98504-5770, 360-764-0050.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

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

Is exempt under RCW 19.85.025(4).

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

Explanation of exemptions: The proposed rules do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:  
Is fully exempt.

September 28, 2023  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4980.6

AMENDATORY SECTION (Amending WSR 12-05-039, filed 2/10/12, effective 3/12/12)

**WAC 388-484-0005 There is a five-year ((sixty)) 60-month time limit for TANF, SFA, and GA-S cash assistance. (1) What is the ((sixty)) 60-month time limit?**

(a) You can receive cash assistance for temporary assistance for needy families (TANF), state family assistance (SFA), and general assistance for pregnant women (GA-S) for a lifetime limit of ((sixty)) 60 months. The time limit applies to cash assistance provided by any combination of these programs, and whether or not it was received in consecutive months.

(b) If you receive cash assistance for part of the month, it counts as a whole month against the time limit.

(c) If you have received cash assistance from another state on or after August 1, 1997, and it was paid for with federal TANF funds, those months will count against your time limit.

(d) The time limit does not apply to diversion cash assistance, support services, food assistance, or medicaid.

**(2) When did the ((sixty)) 60-month time limit go into effect?**

The ((sixty)) 60-month time limit applies to cash assistance received on or after August 1, 1997, for TANF and SFA. Although the GA-S program no longer exists, the time limit applies to GA-S cash assistance received from May 1, 1999, through July 31, 1999.

**(3) Does the time limit apply to me?**

((a)) The ((sixty)) 60-month time limit applies to you for any month in which you are ((an ineligible parent or a)) an aided parent or other relative as defined in WAC 388-454-0010, or ((a)) an aided minor parent emancipated through court order or marriage.

((b) ~~An ineligible parent is a natural, adoptive or step parent as defined in WAC 388-454-0010 who receives a TANF/SFA grant for his or her child but is ineligible to receive TANF/SFA assistance.~~)

**(4) Do any exceptions to the time limits apply to me?**

The department does not count months of assistance towards the ((sixty)) 60-month time limit if you are:

(a) A relative other than a parent as defined in WAC 388-454-0010(3);

(b) An ineligible parent who is a natural, adoptive, or stepparent as defined in WAC 388-454-0010 who receives TANF/SFA grant for their child, but is ineligible to receive TANF/SFA assistance such as:

(i) A parent who is ineligible due to receiving supplemental security income (SSI) benefits,

(ii) A parent who is ineligible due to citizenship, or

(iii) A parent who is ineligible due to felony status;

~~((a))~~ (c) An adult caretaker, other than an ineligible parent, as described in WAC 388-454-0005 through 388-454-0010, who is not a member of the assistance unit and ~~((you are))~~ is receiving cash assistance on behalf of a child;

~~((b))~~ (d) An unemancipated pregnant or parenting minor living in a department approved living arrangement as defined by WAC 388-486-0005; or

~~((e))~~ (e) An adult ~~((and you are))~~ living in Indian country, as defined under 18 U.S.C. 1151, or an Alaskan native village, ~~((and you are))~~ receiving TANF, SFA, or GA-S cash assistance during a period when at least ~~((fifty percent))~~ 50% of the adults living in Indian country or in the village were not employed. See WAC 388-484-0010.

**(5) ~~((What happens if an ineligible parent in the home or a member of my assistance unit has received sixty months of TANF, SFA, and GA-S cash benefits?))~~**

~~Once any adult or emancipated minor in the assistance unit has received sixty months of cash assistance, or an ineligible parent in the home has received sixty months of cash assistance for themselves or their child, the entire assistance unit becomes ineligible for TANF or SFA cash assistance, unless they qualify for a hardship extension and are eligible for an extended period of cash assistance called a TANF/SFA time limit extension under WAC 388-484-0006.~~

**~~((6))~~ (6) **What can I do if I disagree with how the department has counted my months of cash assistance?****

(a) If you disagree with how we counted your months of cash assistance, you may ask for a hearing within ~~((ninety))~~ 90 days of the date we sent you a letter telling you how many months we are counting.

(b) You will get continued benefits (the amount you were getting before the change) if:

(i) You have used all ~~((sixty))~~ 60 months of benefits according to our records; and

(ii) You ask for a hearing within the ~~((ten))~~ 10-day notice period, as described in chapter 388-458 WAC.

(c) If you get continued benefits and the administrative law judge (ALJ) agrees with our decision, you may have to pay back the continued benefits after the hearing, as described in chapter 388-410 WAC.

**~~((7))~~ (6) **Does the department ever change the number of months that count against my time limit?****

We change the number of months we count in the following situations:

(a) You repay an overpayment for a month where you received benefits but were not eligible for any of the benefits you received. We subtract one month for each month that you completely repay. If you were eligible for some of the benefits you received, we still count that month against your time limit.

(b) We did not close your grant on time when the division of child support (DCS) collected money for you that was over your grant amount two months in a row, as described in WAC 388-422-0030.

(c) An ALJ decides at an administrative hearing that we should change the number of months we count.

(d) You start getting worker's compensation payments from the department of labor and industries (L&I) and your L&I benefits have been reduced by the payments we made to you.

(e) You participated in the excess real property (ERP) program in order to get assistance and we collected the funds when your property sold.

(f) Another state gave us incorrect information about the number of months you got cash assistance from them.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapters 74.08A and 74.12 RCW, 2011 1st sp.s. c 42, and 2011 1st sp.s. c 2. WSR 12-05-039, § 388-484-0005, filed 2/10/12, effective 3/12/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-484-0005, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.08A RCW. WSR 06-10-034, § 388-484-0005, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-05-010, § 388-484-0005, filed 2/6/04, effective 3/8/04. Statutory Authority: RCW 74.08.090, 74.04.050, and 78.08A.340. WSR 03-06-046, § 388-484-0005, filed 2/28/03, effective 3/31/03. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-484-0005, filed 5/31/02, effective 6/1/02. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010, and 42 U.S.C. 608 (a) (7). WSR 01-04-016, § 388-484-0005, filed 1/26/01, effective 2/1/01. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 99-08-050, § 388-484-0005, filed 4/1/99, effective 5/2/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-484-0005, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 23-01-020, filed 12/8/22, effective 1/8/23)

**WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive 60 or more months of TANF/SFA cash assistance?**

After you receive 60 or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

**(2) Who is eligible for a hardship TANF/SFA time limit extension?**

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, (~~or are an ineligible parent, and you have~~) received 60 cumulative months of TANF and you:

(a) (~~You~~) Are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) (~~or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation~~); or

~~(b) You:~~

~~((i)) (b) Are a ((supplemental security income recipient or a)) Social Security disability insurance recipient; or~~

~~((ii)) (c) Are at least 65 years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or~~

~~((iii)) (d) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or~~

~~((iv)) (e) Are working in unsubsidized employment for 32 hours or more per week; or~~

~~((v))~~ (f) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

~~((vi))~~ (g) Are homeless by reason of hardship, including when your family includes a child or youth who is without a fixed regular, and adequate nighttime residence as described in the federal McKinney-Vento Homeless Assistance Act (Title 42. U.S.C. 11434a(2), chapter 119, subchapter VI, part B) as it existed on January 1, 2020; or

~~((vii) Are)~~ (h) Were an active TANF recipient from July 1, 2021, through June 30, 2023; or

~~((viii) Are)~~ (i) Were an active TANF recipient, beginning July 1, 2022, when Washington state employment security department's most recently published unemployment rate is seven percent or above.

~~((ix))~~ (j) Do not qualify for other time limit extension criteria in this section and received TANF during a month on or after March 1, 2020, when the Washington state employment security department's unemployment rate was at seven percent or above. The extension provided for under this subsection (2)(b)(ix) is equal to the number of months that you received TANF on or after March 1, 2020, when the Washington state employment security department's unemployment rate was at seven percent or above.

**(3) Who reviews and approves a hardship time limit extension?**

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least 52 months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved, when your time limit expires, and how to request an administrative hearing if you disagree with the decision.

**(4) When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?**

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

**(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?**

~~((a))~~ You are still a TANF/SFA recipient (~~or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child~~) and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

~~((b))~~ During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

**(6) How long will a hardship TANF/SFA time limit extension last?**

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2) (a) ~~((, (b) (i) or (ii)))~~ then we will review your extension at least every 12 months;

(ii) If you are extended under WAC 388-484-0006 (2) (b) ~~((iii)), ((iv), (v), or (vi)))~~ (2) (c), (2) (d), or (2) (e) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.010, 74.08A.015, and 2022 c 297 and 2022 c 24. WSR 23-01-020, § 388-484-0006, filed 12/8/22, effective 1/8/23. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.010 and 2021 c 334, 2021 c 239. WSR 21-22-053, § 388-484-0006, filed 10/28/21, effective 11/28/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 2020 c 320 and C.F.R. 20 § 416.2095 through 416.2099. WSR 21-12-077, § 388-484-0006, filed 5/28/21, effective 7/1/21. Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030, chapters 74.08A, and 74.12 RCW. WSR 20-05-046, § 388-484-0006, filed 2/13/20, effective 3/15/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-484-0006, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapters 74.08A and 74.12 RCW, 2011 1st sp.s. c 42, and 2011 1st sp.s. c 2. WSR 12-05-039, § 388-484-0006, filed 2/10/12, effective 3/12/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-484-0006, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.08A RCW. WSR 06-10-034, § 388-484-0006, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. WSR 03-24-057, § 388-484-0006, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-484-0006, filed 5/31/02, effective 6/1/02.]

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

## WSR 23-20-106

## PROPOSED RULES

## TRANSPORTATION IMPROVEMENT BOARD

[Filed October 3, 2023, 11:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [23-01-065].

Title of Rule and Other Identifying Information: Chapters 47.26 and 47.66 RCW; RCW 47.04.320 and 47.04.325 [chapter 479-10 WAC].

Hearing Location(s): On December 1, 2023, at 9 a.m., in Bellevue, Washington. Held during the transportation improvement board (board) meeting.

Date of Intended Adoption: December 1, 2023.

Submit Written Comments to: Gena Workman, P.O. Box 40901, Olympia, WA 98504-0901, email genaw@tib.wa.gov, by November 20, 2023.

Assistance for Persons with Disabilities: Contact Gena Workman, phone 360-586-1140, by November 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The [purpose of the] proposal is to update the complete streets program that was established in 2015 as part of the connecting Washington transportation package. Three grant cycles have been completed and both agency customers and the board have identified the need to realign the program to be consistent with the board's existing programs. The Washington state legislature enacted Move Ahead Washington in 2022, which has included Climate Commitment Act (CCA) funding. This requires modifying existing chapter 479-10 WAC to comply with CCA funding requirements.

Statutory Authority for Adoption: Chapter 47.26 RCW.

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

Name of Proponent: Transportation improvement board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ashley Probart, P.O. Box 40901, Olympia, WA 98504-0901, 360-790-5472.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule changes are cost neutral to the board. Program funding will continue to be distributed according to chapter 47.26 RCW and Title 479 WAC.

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

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

October 3, 2023  
Ashley Probart  
Executive Director

OTS-4999.1

AMENDATORY SECTION (Amending WSR 17-09-018, filed 4/10/17, effective 5/11/17)

**WAC 479-10-500** (~~(What is the)~~) **Purpose and authority for the complete streets grant program(?)**. The transportation improvement board (TIB) adopts reasonable rules necessary to implement the complete streets grant program authorized in RCW 47.04.320. The purpose of the program is to encourage local agencies to adopt ordinances (~~(calling)~~) for street and road designs that incorporate access to all users(~~(r)~~) including(~~(r)~~) bicyclists, pedestrians, motorists, and public transportation riders (~~(by providing a financial incentive)~~).

[Statutory Authority: Chapter 47.26 RCW. WSR 17-09-018, § 479-10-500, filed 4/10/17, effective 5/11/17.]

AMENDATORY SECTION (Amending WSR 17-09-018, filed 4/10/17, effective 5/11/17)

**WAC 479-10-510** (~~(What local governments are)~~) **Who is eligible for ((the)) complete streets grant program(?) funding**. A city or county is eligible to receive (~~(a grant award from the)~~) complete streets grant program funding when it has a jurisdiction-wide complete streets ordinance adopted by its council or commission.

[Statutory Authority: Chapter 47.26 RCW. WSR 17-09-018, § 479-10-510, filed 4/10/17, effective 5/11/17.]

NEW SECTION

**WAC 479-10-515** **Projects eligible for complete streets funding**. The following types of improvements are permitted uses:

- (1) Pedestrian infrastructure;
- (2) Bicycle infrastructure;
- (3) Street or road modifications that provide or improve access to public transit;
- (4) Aesthetic improvements to the streetscape associated with the street or road system; and
- (5) Other activities consistent with RCW 47.04.320 may be authorized by the board on a case-by-case basis.

[]

NEW SECTION

**WAC 479-10-525** **Project selection for the complete streets program**. Projects may be selected by the board or executive director based on need, economy of scale, opportunities, and criteria listed in RCW 47.04.320.

[]



NEW SECTION**WAC 479-10-535 Award criteria for the complete streets program.**

The board establishes the following criteria for use in evaluating complete streets grant applications:

- (1) Purpose and need of proposed complete streets elements; and
- (2) Constructibility - Demonstrates a strong likelihood to achieve full funding, obtain permits, acquire right of way, and reach construction within the timelines established in WAC 479-05-211.

[]

NEW SECTION**WAC 479-10-545 Acquisition of rights of way.**

Complete streets program projects are eligible for the acquisition of right of way in accordance with WAC 479-05-140.

[]

NEW SECTION**WAC 479-10-555 Identification of funding requests for the complete streets program.**

To be considered for a project under the complete streets program, an eligible agency may submit a funding application in response to either a standard TIB call for projects or identification and notification by TIB staff based on other opportunities available to the area to decrease material or labor costs associated with project delivery.

[]

NEW SECTION**WAC 479-10-565 Project phases for the complete streets program.**

(1) Complete streets program projects will have five phases. Each phase will require specific documentation as described below and each phase must be approved before the applicant agency is eligible to receive the related funding:

- (a) Application phase;
- (b) Design phase;
- (c) Bid authorization phase;
- (d) Bid award phase; and
- (e) Project closeout phase.

(2) A manually signed copy of a contract or any amendments, statement of work, or other transaction documents delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy.

(3) An electronic signature shall have the same force and effect as a manual signature on all agreements, forms, and other documents submitted in support of a project under this chapter. For purposes of

this section, an "electronic signature" has the same meaning as in RCW 1.80.010(10).

TIB will provide documents for the city or county to sign and return.

All necessary project cost documentation must be received prior to final payment.

[]

NEW SECTION

**WAC 479-10-575 Executive director administrative increase authority for the complete streets program.** The executive director has administrative increase authority of 15 percent of project costs or \$150,000, whichever is greater.

[]

NEW SECTION

**WAC 479-10-585 Matching requirements for the complete streets program.** The complete streets program provides funding for the agencies which will be matched by other funds as follows:

(1) For an incorporated city or town that has a population of less than 5,000:

(a) If the city assessed valuation is under \$100,000,000, no cash match is necessary.

(b) If the city assessed valuation is from \$100,000,000 to \$500,000,000, the matching rate is five percent of total project costs.

(c) If the city assessed valuation is greater than \$500,000,000, the matching rate is 10 percent of total project costs.

(2) For incorporated cities or towns with a population of 5,000 or more:

(a) If the city assessed valuation is under \$1,000,000,000, the matching rate is 10 percent of total project costs.

(b) If the city assessed valuation is between \$1,000,000,000 and \$2,500,000,000, the matching rate is 15 percent of total project costs.

(c) If the city assessed valuation is over \$2,500,000,000, the matching rate is 20 percent of total project costs.

(3) For counties:

(a) If the road levy valuation is under \$3,000,000,000, the matching rate is 10 percent of total project costs.

(b) If the road levy valuation is between \$3,000,000,000 to \$10,000,000,000, the matching rate is 15 percent of total project costs.

(c) If the road levy valuation is over \$10,000,000,000, the matching rate is 20 percent of total project costs.

The board uses the current published valuation from the department of revenue.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                |  |
|----------------|--|
| WAC 479-10-520 | How are local governments selected for complete streets grant funding?                       |
| WAC 479-10-530 | Who can nominate?  |
| WAC 479-10-540 | How many nominations may each nominator submit?  |
| WAC 479-10-550 | The board may nominate eligible local governments.   |
| WAC 479-10-560 | How will nominated local governments be evaluated for the complete streets grant program?    |
| WAC 479-10-570 | What projects are eligible?  |
| WAC 479-10-580 | How is the work plan determined?   |
| WAC 479-10-590 | How to make changes to the work plan.  |
| WAC 479-10-600 | When will the grant award payment be made?   |
| WAC 479-10-610 | How is the amount of the incentive payment determined?                                       |
| WAC 479-10-620 | What is required at grant award closeout?  |
| WAC 479-10-630 | When can eligible local governments who have already received an award, receive a new award? |

**WSR 23-20-108**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed October 3, 2023, 12:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-038.

Title of Rule and Other Identifying Information: WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health?, 388-825-615 What type of background check is required?, and 388-825-620 How often must a background check be renewed?

Hearing Location(s): On November 7, 2023, at 10:00 a.m., virtually via [Microsoft] Teams or call in. Please see the department of social and health services (DSHS) website for the most up-to-date information.

Date of Intended Adoption: Not earlier than November 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by November 7, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by October 24, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending these rules to comply with federal background check requirements and to align rules with recent amendments to state law passed under SB 5252.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 43.43.837 and 74.39A.056.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Heather Lum, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1526.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

September 28, 2023

Katherine I. Vasquez  
Rules Coordinator

**SHS-4986.4**

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

**WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health?** (1) In order to be a long-term care worker employed by a home care agency, a person must:

(a) Complete the required DSHS form authorizing a background check((-));

(b) Disclose any disqualifying criminal convictions and pending charges as listed in chapter 388-113 WAC, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC ((388-71-0512)) 388-113-0030((-));

(c) ((Effective January 8, 2012, be)) Be screened through a Washington ((state's)) state name and date of birth background check((-)) (Preliminary results may require a thumb print for identification purposes); and

(d) ((Effective January 8, 2012, be)) Be screened through ((the)) a Washington state and national fingerprint-based background check((-)) as required by RCW 74.39A.056.

(2) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime ((as listed in)) under WAC 388-113-0020, civil adjudication proceeding((-)) or negative action ((as defined in)) under WAC ((388-71-0512 and listed in WAC 388-71-0540)) 388-113-0030; or

(b) Should or should not be employed based on his or her character, competence, ((and/or)) or suitability.

(3) For ((those providers)) a provider listed in RCW 43.43.837(1), ((a second national fingerprint-based background check is required if they have)) who has lived out of the state of Washington ((since the first national fingerprint-based background check was completed)) in the past 36 months, a national fingerprint-based background check is required.

(4) The department may require a long-term care worker to have a Washington state name and date of birth background check ((or)) at any time and a ((Washington state and)) national fingerprint-based background check((- or both, at any time.)) if information is disclosed or found regarding a new:

(a) Pending charge;

(b) Conviction; or

(c) Negative action.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-335, filed 6/24/14,

effective 7/25/14. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-335, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

**WAC 388-825-615 What type of background check is required? (1)**

~~((Beginning January 7, 2012, long)) Long-term care workers and providers ((, including parents and individual providers,))~~ undergoing a background check for initial hire or initial contract ~~((,))~~ must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

~~((2) Beginning January 1, 2016, a newly hired long-term care worker employed by a community residential service business must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.))~~

(a) For a renewal, a person who has continuously resided in Washington state for the past ~~((three consecutive years))~~ 36 months must be screened through a Washington state name and date of birth check.

(b) For a renewal, a person who has resided outside of Washington state in the past ~~((three years))~~ 36 months must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

~~((3))~~ (2) For adult family homes, refer to chapter 388-76 WAC. For assisted living facilities, refer to chapter 388-78A WAC.

~~((4))~~ (3) Beginning July ~~((1))~~ 23, 2023, a residential habilitation center applicant undergoing a background check for initial hire must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

~~((5))~~ (4) All background checks must be completed through the online background check system.

[Statutory Authority: RCW 71A.12.020, 71A.12.030, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710, and 43.43.837. WSR 23-07-130, § 388-825-615, filed 3/22/23, effective 4/22/23. Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and re codified as § 388-825-615, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0615, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

**WAC 388-825-620 How often must a background check be renewed?**

(1) DDA requires a background check at least every ~~((three years))~~ 36 months, or more frequently if required by program rule.

(2) A background check renewal will be conducted as follows:

(a) ~~((Individuals who have))~~ A person who has continuously resided in Washington state for the past ~~((three consecutive years will))~~ 36 months must be screened through a state name and date of birth background check.

(b) (~~Individuals who have~~) A person who has lived outside of Washington state within the past (~~three years will~~) 36 months must be screened through a state name and date of birth check and a national fingerprint-based background check.

(c) (~~Individuals who live~~) A person who lives outside of Washington state and (~~provide~~) provides services in Washington state (~~will~~) must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(3) The department may require a long-term care worker to have a renewed Washington state name and date of birth background check at any time and a national fingerprint-based background check if information is disclosed or found regarding a new:

(a) Pending charge;

(b) Conviction; or

(c) Negative action.

[Statutory Authority: RCW 71A.12.020, 71A.12.030, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710, and 43.43.837. WSR 23-07-130, § 388-825-620, filed 3/22/23, effective 4/22/23. Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-620, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0620, filed 6/24/14, effective 7/25/14.]

**WSR 23-20-112**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed October 3, 2023, 4:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-099.

Title of Rule and Other Identifying Information: Retirees returning to work.

Hearing Location(s): On November 8, 2023, at 9:00 a.m. The hearing will be conducted through Microsoft Teams at <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 242 711 243 152, Passcode A3Hpvi; or phone 833-322-1218, Code 978 438 716#.

Date of Intended Adoption: November 13, 2023.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by November 6, 2023.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email [drs.rules@drs.wa.gov](mailto:drs.rules@drs.wa.gov), by November 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Implementing several retiree return to work bills, including HB [ESHB] 1699 permitting individuals retired from the public employees retirement system, the teachers retirement system, and the school employees retirement system additional opportunities to work for a school district, SHB 1056 repealing some postretirement employment restrictions, and SSB 5538 concerning postretirement employment in nursing positions for a state agency.

Reasons Supporting Proposal: To implement HB [ESHB] 1699, SHB 1056, and SSB 5538 by clarifying the parameters under which retired employees can return to work for employers covered by retirement systems administered by DRS without impacting their DRS-administered retirement benefits.

Statutory Authority for Adoption: RCW 41.50.050; and chapter 110, Laws of 2022, and chapters 99 and 410, Laws of 2023.

Statute Being Implemented: Chapter 110, Laws of 2022; and chapters 99 and 410, Laws of 2023.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5) (a) (i) does not apply to this proposed rule and DRS is not voluntarily making it applicable to the agency.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.



October 3, 2023  
Bianca Stoner  
Rules Coordinator

**OTS-4835.2**

AMENDATORY SECTION (Amending WSR 22-13-053, filed 6/8/22, effective 7/9/22)

**WAC 415-02-030 Definitions.** This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW and WAC.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010 (TRS); RCW 41.35.010 (SERS); RCW 41.40.010 (PERS); and RCW 41.37.010 (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120.

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the 12 named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is **not** a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means 30 consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010 and 41.32.345 (TRS); RCW 41.35.010 (SERS); RCW 41.37.010 (PSERS); and RCW 41.40.010 (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030 (LEOFF), 41.32.010 (TRS), 41.34.020 (Plan 3), 41.35.010 (SERS), 41.37.010 (PSERS) and 41.40.010 (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500.

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030.

(18) **First employed by an eligible employer in an eligible position** means, for purposes of plan default, first employment with an employer, in an eligible position, with which a member has fully exhausted their plan choice rights.

(19) **HERPs** mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).

(20) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

(21) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

(22) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least 20 service credit years, that is increased by 0.0025 percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

(23) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

(24) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

(25) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

(26) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

(27) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

(28) **Nonadministrative position or nonadministrative capacity** refers to retirees returning to work:

(a) In a position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school which:

~~((a))~~ (i) Does not require an administrative certification, as defined by the office of the superintendent of public instruction, (currently positions requiring the certification include: Principal, vice principal, program administrator, conditional administrator, superintendent or program administrator certifications); or

~~((b))~~ (ii) Does not evaluate staff.

(b) In a position at a state agency or a public institution of higher education as a nonadministrative licensed nurse whose primary responsibility is to provide nursing care as described under WAC 415-106-010(7).

(29) **Normal retirement** means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2), 41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820(1) (PERS Plan 3), or 43.43.250 (WSPRS).

(30) **Participant** means an eligible employee who participates in a deferred compensation plan.

(31) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

(32) **Pension plan** is a plan that provides a lifelong post retirement payment of benefits to employees.

(33) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

(34) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

(35) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

(36) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

(37) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

(38) **Plan choice rights** refers to a member's right, within a 90-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3 or be defaulted into a plan after the full 90-day period has expired.

(a) A member will be reported in Plan 2 until plan choice rights have been exercised.

(b) A member must make a choice within 90 calendar days (computed as described in RCW 1.12.040) from the first day of employment in an eligible position.

(c) A member will be defaulted into a plan if they continue employment in an eligible position past the 90-day plan choice period without making a choice.

(d) A member may exercise plan choice rights only once per system.

(e) Once a member makes a plan choice, that choice cannot be changed, even if the member is still within 90 days of hire.

(39) **Plan year** is the 12-month period that begins on January 1st and ends on December 31st of the same calendar year.

(40) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

(41) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

(42) **Public record** is defined in RCW 42.56.010.

(43) **Restoration** is the process of restoring a member's service credit for prior periods.

(44) **Retirement system employer - See "employer."**

(45) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

(46) **Separation date** is the date a member ends employment in a position eligible for retirement.

(47) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

(48) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

(49) **Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

(50) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

(51) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a designee after the death of a member or retiree.

(52) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

(53) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

(54) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

[Statutory Authority: RCW 41.50.050. WSR 22-13-053, § 415-02-030, filed 6/8/22, effective 7/9/22; WSR 21-16-020, § 415-02-030, filed 7/23/21, effective 8/23/21; WSR 20-13-064, § 415-02-030, filed 6/15/20, effective 7/16/20; WSR 20-01-079, § 415-02-030, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-02-030, filed 8/11/16, effective 9/11/16; WSR 16-08-008, § 415-02-030, filed 3/24/16, effective 4/24/16; WSR 10-24-099, § 415-02-030, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 41.50.050(5) and 41.04.640. WSR 09-01-021, § 415-02-030, filed 12/8/08, effective 1/8/09. Statutory Authority: RCW 41.50.050(5). WSR 06-18-009, § 415-02-030, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.40.010(42), 41.40.037. WSR 04-04-037, § 415-02-030, filed 1/29/04, effective 3/1/04. Statutory Authority: RCW 41.50.050(5). WSR 02-23-037, §

415-02-030, filed 11/13/02, effective 1/1/03; WSR 02-01-120, § 415-02-030, filed 12/19/01, effective 1/19/02. Statutory Authority: RCW 41.50.050. WSR 00-10-016, § 415-02-030, filed 4/21/00, effective 5/22/00; WSR 94-09-039, § 415-02-030, filed 4/19/94, effective 5/20/94; Order 4, § 415-02-030, filed 7/27/77.]

NEW SECTION

**WAC 415-02-170 How is my benefit affected if I return to work and impacted by more than one annual hourly limit? (1) How is my benefit affected if I return to work in positions with two different employers that qualify for more than one annual hourly limit?**

If you return to work in more than one position, and the positions have different annual hourly limits, you will be limited to the lowest annual hourly limit for all positions.

**Examples:** Don is retired from teachers' retirement system (TRS) 2 and returned to work as a teacher. Don's nonadministrative TRS position at a school district has an annual limit of 1,040 hours. While working at the school district, Don also takes a position at a state agency. The state agency position is a public employees' retirement system (PERS) position, and Don is subject to an annual limit of 867 hours. Don's annual hourly limit is lowered to 867 hours while working in both positions. Don then separates from the state agency position, and Don's annual hourly limit will return to 1,040 hours.

Pat is a 2008 ERF retiree, who returned to work as a driver for the department of transportation (DOT) in a PERS position with an annual limit of 867 hours. Pat gets a second job, working as a bus driver for a school district. The nonadministrative position in the school employees' retirement system (SERS) is subject to an annual limit of 1,040 hours. Pat's benefit is governed by the lowest limit, in this case the PERS position at DOT. Pat's annual limit will be 867 hours in a calendar year.

**(2) If I receive pension payments from more than one DRS administered retirement system, and each system has different annual hourly limits, how will my benefit be affected?**

If you are retired from multiple DRS systems, each of your benefits will be affected according to rules of the respective system.

**Example:** Alex retired from two systems, PERS and SERS, and returned to work as a bus driver in a SERS-eligible position at a school district after the mandatory 30-day break. Alex's two benefits will be impacted differently.

- PERS - To qualify for the 1,040-hour annual hourly limit in PERS, you need a 100-day break in service. Alex only has a 30-day break before returning to work, so Alex's PERS benefit will be limited to 867 hours.

- SERS - Alex's SERS benefit does not require the 100-day break. So, Alex's annual hourly limit for the SERS benefit will be limited to 1,040 hours.

[ ]

NEW SECTION

**WAC 415-02-173 How is my benefit affected if I return to work and am impacted by more than one annual hourly limit? (1) How is my benefit affected if I return to work in positions with two different employers that qualify for more than one annual hourly limit?**

If you return to work in more than one position, and the positions have different annual hourly limits, you will be limited to the highest annual hourly limit for all positions.

**Examples:** Don is retired from teachers' retirement system (TRS) 2 and returned to work as a teacher. Don's nonadministrative TRS position at a school district has an annual limit of 1,040 hours. While working at the school district Don also takes a position at a state agency. The state agency position is a public employees' retirement system (PERS) position and Don is subject to an annual limit of 867 hours. Don's annual hourly limit is lowered to 867 hours while working in both positions. Don then separates from the state agency position and Don's annual hourly limit will return to 1,040 hours.

Pat is a 2008 ERF retiree, who returned to work as a driver for the department of transportation (DOT) in a PERS position with an annual limit of 867 hours. Pat gets a second job, working as a bus driver for a school district. The nonadministrative position in the school employees' retirement system (SERS) is subject to an annual limit of 1,040 hours. Pat's benefit is governed by the lowest limit, in this case the PERS position at DOT. Pat's annual limit will be 867 hours in a calendar year.

**(2) If I receive pension payments from more than one DRS administered retirement system, and each system has different annual hourly limits, how will my benefit be affected?**

If you are retired from multiple DRS systems, each of your benefits will be affected according to rules of the respective system.

**Example:** Alex retired from two systems, PERS and SERS, and returned to work as a bus driver in a SERS-eligible position at a school district after the mandatory 30-day break. Alex's two benefits will be impacted differently.

- PERS - To qualify for the 1,040-hour annual hourly limit in PERS, you need a 100-day break in service. Alex only has a 30-day break before returning to work, so Alex's PERS benefit will be limited to 867 hours.

- SERS - Alex's SERS benefit does not require the 100-day break. So, Alex's annual hourly limit for the SERS benefit will be limited to 1,040 hours.

[]

AMENDATORY SECTION (Amending WSR 20-01-079, filed 12/11/19, effective 1/11/20)

**WAC 415-02-325 2008 Early retirement factors. (1) What are the 2008 early retirement factors?** In chapter 491, Laws of 2007, the legislature created optional early retirement factors (ERFs) for members retiring on or after September 1, 2008. Referred to as the 2008 ERFs, these optional factors are available to Plan 2 and Plan 3 members of the following retirement systems: Public employees' retirement system (PERS); school employees' retirement system (SERS); and teachers' re-

tirement system (TRS). The 2008 ERFs (~~provide~~) provided a higher retirement benefit than the three percent ERFs, but (~~impose~~) imposed stricter return to work rules. Effective January 1, 2024, the stricter return to work rules were removed and eligible retirees who retired under the three percent ERFs will have or have had their benefit recalculated under the 2008 ERFs.

(2) **If I retire before age (~~sixty-five~~) 65 using the 2008 ERFs, how will my benefit be calculated?** Your normal (age (~~sixty-five~~) 65) retirement benefit will be multiplied by the factor shown in the following table, based on your age at the time of your early retirement.

Retirement Age	2008 Early Retirement Factor
55	0.80
56	0.83
57	0.86
58	0.89
59	0.92
60	0.95
61	0.98
62	1.00
63	1.00
64	1.00
65	1.00

(3) **Am I eligible for the 2008 ERFs?** Plan 2 and Plan 3 members of PERS, SERS, and TRS, who entered membership prior to May 1, 2013, must be at least age (~~fifty-five~~) 55 and have at least (~~thirty~~) 30 service credit years to be eligible for retirement using the 2008 ERFs.

(4) **What are the return to work rules if I retire under the 2008 ERFs?** (~~The legislation that created the 2008 ERFs also established restrictions on retirees who return to an employer after selecting the 2008 ERF option. The 2008 ERF return to work restrictions are a broad prohibition to avoid incentives for early retirement while the member continues to collect payments from a public employer before reaching full retirement age. A retiree's benefit will stop if they retire under the 2008 ERFs and return to a DRS-covered employer, in any capacity for which they receive compensation, before age sixty-five.~~)

(5) **What are the exceptions to the return to work rules if I retire from SERS or TRS under the 2008 ERFs?** Under legislation effective May 8, 2019, you may return to work in a nonadministrative position as defined in WAC 415-02-030 for a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school without suspension of your benefit until you exceed eight hundred sixty-seven hours in a calendar year.

(6) **What organizations are DRS-covered employers?** For the purpose of this section, a DRS-covered employer is any organization that employs one or more members of any retirement system administered by DRS. This includes, but is not limited to, public agencies, boards and commissions, counties, cities and towns, public schools and educational service districts, higher education institutions, libraries and utilities throughout the state. It also includes first class cities that maintain separate retirement systems but also employ members of the law enforcement officers' and fire fighters' retirement system.

~~(7) What types of compensation impact my benefit if I retire under the 2008 ERFs and return to work before age sixty-five?~~ The legislature defines "employment with an employer" for purposes of the 2008 ERF return to work restrictions as including "any personal service contract, service by an employer as a temporary or project employee, or any other similar compensated relationship with any employer." The phrase "any other similar compensated relationship with any employer" includes both employment with a DRS-covered employer and any other type of compensated relationship with a DRS-covered employer.

**Example:**

~~Bob, an attorney for the city of Olympia, retires using the 2008 ERFs. Can Bob receive his pension if he subsequently provides legal services to Spokane County?~~ It depends on whether Bob's compensated relationship with Spokane County meets the definition of "employment with an employer." Below are examples of the different types of potential compensated relationships Bob could have, and whether those relationships would be considered "employment with an employer."

**Personal service contract.** If Bob has a personal service contract with Spokane County to provide legal services, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would be suspended for any month in which he provides this compensated service to Spokane County.

**Sole proprietorship or partnership. 2008 ERF retiree is sole proprietor or partner.** If Bob is a sole proprietor or a partner of a law firm; the firm contracts with Spokane County to provide services; and Bob or any other employee of the law firm provides legal services to Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would be suspended for any month in which he or his firm provides service to Spokane County under the contract.

**Corporation. 2008 ERF retiree is a shareholder of a publicly traded corporation.** If Bob is a shareholder of a publicly traded corporation and the corporation contracts with Spokane County to provide services, then Bob would not be considered to be in a "similar compensated relationship with an employer" within the meaning of the statute. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

**Corporation. ERF retiree is an employee of the corporation.** If Bob is working for the corporation solely on matters unrelated to the corporation's contract with Spokane County, Bob is not in a "similar compensated relationship" with Spokane County. Bob's monthly benefit would not be suspended for any month in which the corporation provides service to Spokane County.

If Bob is working for the corporation on matters that are related to the corporation's contract with Spokane County, then Bob would be considered to be in a "similar compensated relationship with an employer."

~~(8) What is considered compensation?~~ Compensation is financial consideration for work performed, regardless of whether that consideration is paid as a salary, hourly amount, or flat dollar amount. A reimbursement is not considered compensation.

**Examples:**

**Independent contractor** — A TRS Plan 2 member retires using the 2008 ERFs at age 62. He receives a \$2,500 monthly pension payment. When he is 64, he enters a contract to provide training for school em-



ployees. He receives a flat dollar amount of \$50 per trainee. Under the 2008 ERF return to work restrictions, he has received compensation from a DRS-covered employer. Therefore, his \$2,500 pension benefit is forfeited for the month he performed the services.

**Board/commission** — A PERS Plan 3 member retires using the 2008 ERFs at age 60. She receives a \$1,200 monthly pension payment. When she is 62, she is elected as a member of the local school board. As a school board member she does not receive a salary; however, she does receive reimbursements for travel and food. Under the 2008 ERF return to work restrictions, she is able to continue to receive her pension while receiving those reimbursements.

**(9) What are a DRS employer's responsibilities for determining whether an employee is a 2008 ERF retiree?** RCW 41.50.139 requires DRS employers to obtain, in writing, the retirement status of all new employees. If the employer fails to report a 2008 ERF retiree's retirement status to the department, the employer is liable for any overpayments that may occur.

**(10) What are a DRS employer's responsibilities for determining whether a contractor's employees are 2008 ERF retirees?** DRS employers who hire a contractor to perform services for their organization will need to inquire with the contractor and confirm with DRS to determine if any of the workers providing services to the DRS employer through the contractor retired using the 2008 ERFs, or if the company is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. See WAC 415-108-710 (PERS), 415-110-710 (SERS), and 415-112-525 (TRS).) Please refer to WAC 415-108-710, 415-110-710, and 415-112-525 for specific system rules.

[Statutory Authority: RCW 41.50.050. WSR 20-01-079, § 415-02-325, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.50.050(5). WSR 17-04-050, § 415-02-325, filed 1/26/17, effective 2/26/17.]

## OTS-4834.2

AMENDATORY SECTION (Amending WSR 22-13-091, filed 6/13/22, effective 7/14/22)

### **WAC 415-106-700 What are the return to work rules for PSERS?**

**(1) How soon can I return to work after I retire without impacting my PSERS retirement benefit?** You may begin working immediately after you retire without impacting your PSERS retirement benefit if:

- (a) You go to work for a private employer;
- (b) You are an independent contractor as defined in WAC 415-02-110;
- (c) Your only employment is as an elected official and you are not a PERS member; or
- (d) You work in an ineligible position.

**(2) If you return to work in a PERS, SERS, or TRS Plan 2 or Plan 3, or LEOFF Plan 2 eligible position, your retirement benefit will be affected as follows:**

(a) If you retire and then return to work sooner than 30 consecutive calendar days from your accrual date (effective retirement date), your monthly retirement benefit will be reduced in accordance with RCW 41.37.050(1) until you remain absent for at least 30 consecutive calendar days.

(b) If you retire and remain absent at least 30 consecutive calendar days from your accrual date, you may work up to 867 hours each calendar year before your retirement benefit is suspended.

(3) If you return to work in an eligible **PSERS position**, your retirement benefit will be affected as follows:

(a) If you elect to reenter membership, your retirement benefit will be suspended. When you rerehire, your retirement benefit will be recalculated pursuant to WAC 415-106-710.

(b) If you return to an eligible PSERS position within 30 consecutive days of your accrual date (effective retirement date) and do not reenter membership, your monthly retirement benefit will be reduced by five and one-half percent for every eight hours you work during that month. This reduction will be applied each month until you remain absent for 30 consecutive calendar days. The reduction will accrue for a maximum of 160 hours per month. Any reduction over 100 percent will be applied to the benefit you are eligible to receive in subsequent months. See RCW 41.37.050(1).

(c) If you return to an eligible PSERS position after being absent for 30 consecutive calendar days from your accrual date (effective retirement date) and do not reenter membership, your retirement benefit will be suspended until you separate from PSERS employment.

(4) If you return to work after retirement from PSERS and another DRS retirement system, see WAC 415-113-300 to determine the effect of returning to work.

(5) **What is the annual limit?**

(a) No limit. You may work as many hours as you want without affecting your retirement benefit if you work:

(i) In a position that is not eligible for membership in a DRS or higher education retirement plan;

(ii) As an independent contractor;

(iii) For a private employer.

(b) **Eight hundred sixty-seven-hour limit.** You may work up to 867 hours in a calendar year, in a position that is eligible for membership in a DRS or a public institution of higher education retirement plan, before your retirement allowance is suspended.

(c) **One thousand forty-hour limit.** From April 14, 2023, through July 1, 2026, if you had a 30-day break from your accrual date, you may work up to 1,040 hours in a calendar year, at a state agency or higher education institution in a nonadministrative position as a licensed nurse.

(6) **What hours are counted toward the limit?**

(a) **Counted toward the ((867)) annual hour limit:** All compensated hours that are worked in an eligible position covered by a DRS or higher education retirement plan, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) **Not counted toward the hour limit:** Cashouts of unused sick and vacation leave.

((+6)) (7) **What happens if I work more than the annual ((867)) hour limit?**

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after

you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the hour limit.

(b) Your retirement benefit will be restarted beginning the next calendar year (January) or the day after you terminate all eligible employment identified in subsection (2) of this section, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the work limit and received a retirement benefit. See RCW 41.50.130.

~~((7))~~ **(8) Terms used.**

(a) Accrual date - RCW 41.37.240.

(b) PSERS: Public safety employees' retirement system.

(c) Eligible position - RCW 41.37.010; WAC 415-106-100.

(d) Ineligible position - RCW 41.37.010.

(e) Membership - RCW 41.37.020.

(f) Month - Calendar month as defined in WAC 415-02-030.

[Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-700, filed 6/13/22, effective 7/14/22. Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-106-700, filed 8/11/16, effective 9/11/16. Statutory Authority: RCW 41.50.050(5), 41.37.050, 41.50.130, chapters 41.32, 41.35, and 41.40 RCW. WSR 08-02-046, § 415-106-700, filed 12/27/07, effective 1/27/08.]

## OTS-4833.1

AMENDATORY SECTION (Amending WSR 16-17-047, filed 8/11/16, effective 9/11/16)

**WAC 415-108-710 What are the return to work rules for PERS Plan 1, Plan 2, and Plan 3? (1) How soon can I return to work after I retire without impacting my PERS retirement benefit?**

(a) You may begin working immediately after you retire without impacting your PERS retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110;

(iii) Your only employment is as an elected official and you end your PERS membership under RCW 41.40.023 (3)(b); or

(iv) You are a PERS Plan 1 retiree elected to office or appointed to office by the governor.

(b) If you retire and then return to work sooner than ~~((thirty))~~ 30 consecutive calendar days from your accrual date (effective retirement date), your monthly retirement benefit will be reduced in accordance with RCW 41.40.037(1) until you remain absent for at least ~~((thirty))~~ 30 consecutive calendar days.

(c) If you retire and remain absent at least ~~((thirty))~~ 30 consecutive calendar days from your accrual date, if you meet the definition of separation in WAC 415-02-115, you may return to work in any position ~~((eligible or ineligible))~~, for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting

your PERS retirement benefit until you reach your applicable hour limit.

(d) If you worked prior to retirement in an ineligible position and continue to work in the same ineligible position beyond retirement, this will not be considered a violation of the 30 consecutive days in (b) and (c) of this subsection if separation from your employer, as defined in WAC 415-02-115, was satisfied.

(e) Examples:

(i) Pat works for Snohomish County and fully separates employment at the age of 60. Pat then moves to Spokane and begins employment with the Spokane Transit Authority in a position that is not eligible for retirement benefits. This employment continues and the position remains ineligible for retirement benefits. At age 65 Pat is eligible to begin collecting the PERS retirement benefit earned while working at Snohomish County, without terminating employment from Spokane Transit Authority.

(ii) Skyler works for the local library district until age 65 in a retirement eligible position, then begins working part time for the same library in a position that is not eligible for retirement. Skyler is not eligible to begin receiving a retirement benefit because they have not yet separated from employment with the employer they participated in the retirement system with.

(iii) Taylor works for two different employers concurrently. The position with employer one is a retirement eligible position and the position with employer two does not meet the requirements for retirement eligibility. Prior to age 65 Taylor separates from employment with employer one but continues to work for employer two in the ineligible position. When Taylor reaches age 65 they are eligible to begin receiving their retirement benefit because they have separated from employment with the employer they participated in the retirement system with.

**(2) What is the annual hour limit?** (~~(Except as provided in subsection (5) of this section regarding the 2008 early retirement factors (ERFs), after~~) All retirees including those retired under the alternate early retirement factors after separating from employment and being absent at least ((thirty)) 30 consecutive calendar days as described in subsection (1)(c) of this section, your annual hour limit will be based on the position you return to.

(a) **No limit.** You may work as many hours as you want without affecting your retirement benefit if you work:

(i) In a position that is not eligible for membership in a DRS or higher education retirement plan;

(ii) As an independent contractor;

(iii) For a private employer;

(iv) If you end your PERS membership as an elected official under RCW 41.40.023 (3)(b); or

(v) As a PERS Plan 1 retiree elected to office or appointed to office by the governor.

(b) **Eight hundred sixty-seven-hour limit.** You may work up to ((eight hundred sixty-seven)) 867 hours in a calendar year, in a position that is eligible for membership in a DRS or a public institution of higher education retirement plan, before your retirement allowance is suspended.

(c) One thousand forty-hour limit. From March 23, 2022, through June 30, 2025, if you had a 100-day break from your accrual date, you may work up to 1,040 hours in a calendar year, at a school district in

a nonadministrative position that is eligible for membership in a DRS retirement plan, before your retirement allowance is suspended.

(d) **One thousand forty-hour limit.** From April 14, 2023, through July 1, 2026, if you had a 30-day break from your accrual date, you may work up to 1,040 hours in a calendar year, at a state agency or higher education institution in a nonadministrative position as a licensed nurse.

(3) **What hours count toward the limit?**

(a) **Counted toward the ~~((eight hundred sixty-seven-hour))~~ annual hour limit: All compensated hours that are worked in an eligible position covered by a DRS or higher education retirement plan, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.**

(b) **Not counted toward the annual hour limit:** Cashouts of unused sick and vacation leave.

(4) **What happens if I work more than the annual ~~((eight hundred sixty-seven-hour))~~ hour limit?**

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the hour limit.

(b) Your retirement benefit will be restarted beginning the next calendar year (January) or the day after you terminate all eligible employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the work limit and received a retirement benefit. See RCW 41.50.130.

(5) ~~((What if I am a PERS Plan 2 or Plan 3 member and retired using the 2008 early retirement factors (ERFs)?)~~

~~(a) If you retire using the 2008 ERFs and then return to work before age sixty-five:~~

~~(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, non-permanent, project, temporary, eligible and ineligible positions.~~

~~(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.~~

~~(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.~~

~~(6-)) **Can I return to PERS membership?**~~

~~(a) If you retire from PERS, you have the option to return to membership if you are employed by a PERS employer and meet the eligibility criteria. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.40.023(12).~~

~~(b) If you reenter PERS membership and later choose to retire again, DRS will recalculate your retirement benefit under the applicable statutes and regulations. See WAC 415-108-830. You will be subject to the return to work rules in place at the time of your reretirement.~~

~~(c) If you are a retiree from another retirement system administered by DRS, you may choose to enter PERS membership if you are eligible. See WAC 415-108-725. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.40.270 and 41.40.023.~~

~~((7) What if I retired from PERS and another DRS retirement system?~~~~(a) If you retired from PERS using the 2008 ERFs and another DRS retirement system, and are under age sixty-five:~~~~(i) Your PERS retirement benefit will be impacted as described in subsection (5) of this section.~~~~(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.~~~~(b) If you retired from PERS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.)~~

Note: You may have a choice of returning to membership. See the following WAC sections for more information: WAC 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

~~((8)) (6) Terms used.~~

(a) 2008 Early retirement factors (ERFs) - RCW 41.40.630 (3) (b) for PERS Plan 2 or RCW 41.40.820 (3) (b) for PERS Plan 3.

(b) Accrual date - RCW 41.40.193, 41.40.680, 41.40.801.

(c) PERS: Public employees' retirement system.

(d) Elected official - WAC 415-108-550.

(e) Eligible position - RCW 41.40.010; WAC 415-108-680 through 415-108-700.

(f) Ineligible position - RCW 41.40.010.

(g) Month - Calendar month as defined in WAC 415-02-030.

(h) Public institution of higher education - RCW 28B.10.400.

(i) Membership - RCW 41.40.023.

(j) Alternate early retirement factors - RCW 41.40.630(3).

[Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-108-710, filed 8/11/16, effective 9/11/16. Statutory Authority: RCW 41.50.050(5), 41.40.010(42), 41.40.037. WSR 04-04-037, § 415-108-710, filed 1/29/04, effective 3/1/04. Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. WSR 02-18-046, § 415-108-710, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. WSR 02-02-060, § 415-108-710, filed 12/28/01, effective 1/1/02. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-710, filed 7/25/95, effective 8/25/95.]

**OTS-4832.2**AMENDATORY SECTION (Amending WSR 20-01-079, filed 12/11/19, effective 1/11/20)**WAC 415-110-710 What are the return to work rules for SERS Plan 2 and Plan 3? (1) How soon can I return to work after I retire without impacting my SERS retirement benefit?**

(a) You may begin working immediately after you retire without impacting your SERS retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) Your only employment is as an elected official and you end your SERS membership under RCW 41.35.030 (2)(b).

(b) If you retire and then return to work sooner than ~~((thirty))~~ 30 consecutive calendar days from your accrual date (effective retirement date), your monthly retirement benefit will be reduced in accordance with RCW 41.35.060(1) until you remain absent for at least ~~((thirty))~~ 30 consecutive calendar days.

(c) If you retire and remain absent at least ~~((thirty))~~ 30 consecutive calendar days from your accrual date, if you meet the definition of separation in WAC 415-02-115, you may return to work in any position ~~((eligible or ineligible))~~ for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your SERS retirement benefit until you reach your applicable hour limit.

(d) If you worked prior to retirement in an ineligible position and continue to work beyond retirement, this will not be considered a violation of the 30 consecutive days in (b) and (c) of this subsection assuming that separation from your employer as defined in WAC 415-02-115 was satisfied.

**Examples:** ~~((Amy's last day at work for the ABC school district is June 19, 2015, and her official retirement date is September 1, 2015, (when she starts getting her monthly benefit). She wants to return to work at the start of the new school year on September 8, 2015. She needs to wait thirty consecutive calendar days from her September 1st retirement date before returning to work. If she returns to work before October 1st, her benefit will be reduced until she meets the required thirty-day break from employment.))~~

(i) Pat works for Evergreen School District and fully separates employment at the age of 60. Pat then moves to Spokane and begins employment with the Spokane Library District in a position that is not eligible for retirement benefits. This employment continues and the position remains ineligible for retirement benefits. At age 65 Pat is eligible to begin collecting the school employees' retirement system (SERS) retirement benefit earned while working at Evergreen School District, without terminating employment from Spokane Library District.

(ii) Skyler works for Odessa School District until age 65 in a retirement eligible position, then begins working part time for the same school in a position that is not eligible for retirement. Skyler is not eligible to begin receiving their retirement benefit because they have not yet separated from employment with the employer they participated in the retirement system with.

(iii) Parker works for Spokane Public Schools until age 63 at which point, they separate employment and have their name placed on the on-call substitute teacher list at a number of local school districts. Parker substitutes occasionally for the Deer Park, Mead, and Cheney schools. At age 65 they are eligible to begin collecting the TRS benefit that was earned while working at the Spokane Public Schools without terminating employment from the substitute positions.

(iv) Taylor works for two different employers over the same period of time. The position with employer one is a retirement eligible position and the position with employer two does not meet the requirements for retirement eligibility. Prior to age 65 Taylor separates from employment with employer one but continues to work for employer

two in the ineligible position. When Taylor reaches age 65 they are eligible to begin receiving their retirement benefit because they have separated from employment with the employer they participated in the retirement system with.

(2) **What is the annual hour limit?** (~~(Except as provided in subsection (5) of this section regarding the 2008 early retirement factors (ERFs), after)~~) All retirees including those retired under the alternate early retirement factors after separating from employment and being absent at least ((thirty)) 30 consecutive calendar days as described in subsection (1)(c) of this section, your annual hour limit will be based on the position you return to.

(a) **No limit.** You may work as many hours as you want without affecting your retirement benefit if you work:

(i) In a position that is not eligible for membership in a DRS or higher education retirement plan;

(ii) As an independent contractor;

(iii) For a private employer; or

(iv) If you end your SERS membership as an elected official under RCW 41.35.030 (2) (b).

(b) **Eight hundred sixty-seven-hour limit.** You may work up to (~~(eight hundred sixty-seven)) 867 hours in a calendar year, in a position which is eligible for membership in a DRS or public institution of higher education retirement plan, before your retirement benefit is suspended.~~

(c) One thousand forty-hour limit. From March 23, 2022, through June 30, 2025, you may work up to 1,040 hours in a calendar year, at a school district in a nonadministrative position that is eligible for membership in a DRS retirement plan, before your retirement allowance is suspended.

(3) **What hours count toward the annual hour limit?**

(a) **Counted toward the ((eight hundred sixty-seven)) annual hour limit:** All compensated hours that are worked in an eligible position covered by a DRS or higher education retirement plan, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) **Not counted toward the annual hour limit:** Cashouts of unused sick and vacation leave.

(4) **What happens if I work more than the annual ((eight hundred sixty-seven)) hour limit?**

(a) If you work more than the annual hour limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the limit.

(b) Your retirement benefit will be restarted beginning the next calendar year (January) or the day after you terminate all eligible employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the annual hour limit and received a retirement benefit. See RCW 41.50.130.

(5) (~~(If you retire using the 2008 ERFs and return to work before age sixty-five except as described in subsection (6) of this section:~~

~~(a)(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.~~

~~(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor,~~



or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.

~~(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.~~

~~(b) Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.~~

~~(6) **As a 2008 ERF retiree, can I work and still receive my retirement benefit?**~~

~~(a) If you retire using the 2008 ERFs, effective May 8, 2019, you may return to work before age sixty-five in a nonadministrative position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school and work up to eight hundred sixty-seven hours in a calendar year. If you work more than eight hundred sixty-seven hours, your benefit will be subject to suspension and restarting as described in subsection (4) of this section.~~

~~(b) Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.~~

~~(7)) **Can I return to SERS membership?**~~

~~(a) If you retire from SERS, you have the option to return to membership if you are employed by a SERS employer and meet the eligibility criteria. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.35.030(3).~~

~~(b) If you reenter SERS membership and later choose to retire again, DRS will recalculate your retirement benefit under the applicable statutes and regulations. See WAC 415-110-830. You will be subject to the return to work rules in place at the time of your reretirement.~~

~~(c) If you are a retiree from another retirement system administered by DRS, you may choose to enter SERS membership if you are eligible. See WAC 415-110-725. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.04.270 and 41.35.030.~~

~~((8)) **(6) What if I retired from SERS and another DRS retirement system?** ((a) If you retired from SERS using the 2008 ERFs and another DRS retirement system and are under age sixty-five:~~

~~(i) Your SERS retirement benefit will be impacted as described in subsections (5) and (6) of this section.~~

~~(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.~~

~~(b) If you retired from SERS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five)) If you return to work after retirement from SERS and another DRS retirement system, see WAC 415-113-300 to determine the effect of returning to work.~~

Note: You may have a choice of returning to membership. See the following WAC sections for more information: WAC 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

~~((9)) **(7) Terms used.**~~

~~(a) ((2008 Early retirement factors (ERFs) — RCW 41.35.420 (3) (b) for SERS Plan 2, or RCW 41.35.680 for SERS Plan 3.~~

~~(b)) Accrual date - RCW 41.35.450, 41.35.640.~~

~~((e)) (b) Elected official - WAC 415-110-550.~~

~~((d)) (c) Eligible position - RCW 41.35.010; WAC 415-110-680 through 415-110-700.~~

~~((e)) (d) Ineligible position - RCW 41.35.010.~~

~~((f)) (e) Member - RCW 41.35.010.~~

- ((g)) (f) Month - Calendar month as defined in WAC 415-02-030.  
 ((h)) (g) Nonadministrative position - WAC 415-02-030.  
 ((i)) (h) Public institution of higher education - RCW 28B.10.400.  
 ((j)) (i) SERS - School employees' retirement system.

[Statutory Authority: RCW 41.50.050. WSR 20-01-079, § 415-110-710, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-110-710, filed 8/11/16, effective 9/11/16. Statutory Authority: RCW 41.50.050(5), 41.40.010(42), 41.40.037. WSR 04-04-037, § 415-110-710, filed 1/29/04, effective 3/1/04. Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. WSR 02-02-060, § 415-110-710, filed 12/28/01, effective 1/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-110-710, filed 12/12/00, effective 1/12/01.]

#### OTS-4831.1

AMENDATORY SECTION (Amending WSR 20-01-079, filed 12/11/19, effective 1/11/20)

**WAC 415-112-525 What are the return to work rules for TRS Plan 1, Plan 2, and Plan 3? (1) How soon can I return to work after I retire without impacting my TRS retirement benefit?**

(a) You may begin working immediately after you retire without impacting your TRS retirement benefit if:

- (i) You go to work for a private employer;
- (ii) You are an independent contractor as defined in WAC 415-02-110; or
- (iii) You are a TRS Plan 1 retiree, your only employment is as an elected official, and you end your TRS membership under RCW 41.32.263.

(b) If you retire and then return to work for a public employer except as provided in (a) of this subsection, sooner than ~~((thirty))~~ 30 consecutive calendar days from your accrual date (effective retirement date), your retirement allowance will be reduced until you remain absent for at least ~~((thirty))~~ 30 consecutive calendar days. See RCW 41.32.570 (TRS Plan 1), 41.32.802 (TRS Plan 2), or 41.32.862 (TRS Plan 3).

(c) If you retire and remain absent at least ~~((thirty))~~ 30 consecutive calendar days from your accrual date, if you meet the definition of separation in WAC 415-02-115, you may return to work in any position ~~((eligible or ineligible))~~ for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your TRS retirement benefit until you reach your applicable annual hour limit.

(d) ~~((Examples:~~

- ~~(i) Return to work with no reduction~~

Casey's last day of work is January 20th. Her accrual date (effective retirement date) is February 1st, and there are 28 days in February. If Casey wants to return to work for a public employer after she retires, she will need to wait until at least March 3rd to avoid the daily percentage reduction in her retirement allowance.

**(ii) Return to work before thirty day waiting period ends**

Brian's last day of work is September 1st. His accrual date (effective retirement date) is October 1st. Brian returns to work October 10 through October 17th. In November, Brian's retirement allowance will be reduced by 5.5% for every seven hours worked during October. Brian's new thirty day wait period would be October 18th through November 16th.) If you worked prior to retirement in an ineligible position and continue to work in the same ineligible position beyond retirement, this will not be considered a violation of the 30 consecutive days in (b) and (c) of this subsection assuming that separation from your employer as defined in WAC 415-02-115 was satisfied.

**(e) Examples:**

(i) Pat works for Evergreen School District and fully separates employment at the age of 60. Pat then moves to Spokane and begins employment with the Spokane Library District in a position that is not eligible for retirement benefits. This employment continues and the position remains ineligible for retirement benefits. At age 65 Pat is eligible to begin collecting the TRS retirement benefit earned while working at Evergreen School District, without terminating employment from Spokane Library District.

(ii) Skyler works for Odessa School District until age 65 in a retirement eligible position, then begins working part time for the same school in a position that is not eligible for retirement. Skyler is not eligible to begin receiving their retirement benefit because they have not yet separated from employment with the employer they participated in the retirement system with.

(iii) Parker works for Spokane Public Schools until age 63 at which point, they separate employment and have their name placed on the on-call substitute teacher list at a number of local school districts. Parker substitutes occasionally for the Deer Park, Mead, and Cheney schools. At age 65 they are eligible to begin collecting the TRS benefit that was earned while working at the Spokane Public Schools without terminating employment from the substitute positions.

(iv) Taylor works for two different employers over the same period of time. The position with employer one is a retirement eligible position and the position with employer two does not meet the requirements for retirement eligibility. Prior to age 65 Taylor separates from employment with employer one but continues to work for employer two in the ineligible position. When Taylor reaches age 65 they are eligible to begin receiving their retirement benefit because they have separated from employment with the employer they participated in the retirement system with.

**(2) What is the annual hour limit?** ((Except as provided in subsection (5) of this section regarding the 2008 early retirement factors, after)) All retirees including those retired under the alternate early retirement factors after separating from employment and being absent at least ((thirty)) 30 consecutive calendar days as described in subsection (1)(c) of this section, your annual hour limit will be based on the position you return to.

**(a) No limit.** You may work as many hours as you want without affecting your retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) You are a TRS Plan 1 retiree, and:

(A) Your only employment is as an elected official, and you end your TRS membership under RCW 41.32.263; or

(B) You go to work for a nonpublic educational institution.

(iv) You are a TRS Plan 2 or Plan 3 member working as an on-call substitute teacher.

(b) **Eight hundred sixty-seven-hour limit.** You may work up to ~~((eight hundred sixty-seven))~~ 867 hours in a year (July through June for TRS Plan 1, January through December for TRS Plan 2 and Plan 3) before your retirement benefit is suspended.

(c) **One thousand forty-hour limit.** From March 23, 2022, through June 30, 2025, you may work up to 1,040 hours in a year, (July through June for TRS Plan 1, January through December for TRS Plan 2 and Plan 3) in a position that is eligible for a DRS retirement plan, in:

(i) A nonadministrative position at a school district before your retirement allowance is suspended; or

(ii) An administrative position (as a district superintendent or an in-school administrator) before your retirement allowance is suspended if, you retired before January 1, 2022, and returned to a TRS position at a second-class school district.

(3) **What hours count toward the limit?**

(a) **Counted toward the ~~((eight hundred sixty-seven-hour))~~ annual hour limit: All compensated hours that are worked in an eligible position, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.**

(b) **Not counted toward the annual hour limit:** Cashouts of unused sick and vacation leave.

(4) **What happens if I work more than the annual ~~((eight hundred sixty-seven-hour))~~ hour limit?**

(a) If you work more than the annual hour limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the limit.

(b) Your retirement benefit will be restarted beginning the next year (July for TRS Plan 1, January for TRS Plan 2 or Plan 3) or the day after you terminate all eligible employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the hour limit and received a retirement benefit. See RCW 41.50.130.

(5) ~~((What if I am a TRS Plan 2 or Plan 3 member and retired using the 2008 early retirement factors (ERFs)?)~~

~~(a) If you retire using the 2008 ERFs and return to work before age sixty-five except as described in subsection (6) of this section:~~

~~(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, non-permanent, project, temporary, eligible and ineligible positions.~~

~~(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.~~

~~(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.~~

~~(b) Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.~~

~~(6) **As a 2008 ERF retiree, can I work and still receive my retirement benefit?**~~

~~(a) If you retire using the 2008 ERFs, effective May 8, 2019, you may return to work before age sixty-five in a nonadministrative position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school and work up to eight hundred sixty-seven hours in a calendar year. If you work more than eight hundred sixty-seven hours, your benefit will be subject to suspension and restarting described in subsection (4) of this section.~~

~~(b) If you retired using the 2008 ERFs and returned to work as a substitute teacher in a classroom between June 10, 2016, and May 7, 2019, you will continue to receive your retirement benefit for up to eight hundred sixty-seven hours in a calendar year. After May 7, 2019, (a) of this subsection will continue to allow the provisions of this section for substitute teachers.~~

~~(c) Upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.~~

~~(7)) **Can I return to TRS membership?**~~

~~(a) You may choose to return to membership if you are employed by a public educational institution and are otherwise eligible. Membership will be prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.32.044.~~

~~(b) If you reenter TRS membership and later choose to retire again, DRS will recalculate your retirement benefit under the applicable statutes and regulations. You will be subject to the return to work rules in place at the time of your reretirement.~~

~~(c) If you are a retiree from another retirement system administered by DRS, you may choose to enter TRS membership if you are eligible. See WAC 415-112-546. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.04.270 and 41.35.030.~~

~~((8)) **(6) What if I retired from TRS and another DRS retirement system?** ((a) If you retired from TRS using the 2008 ERFs and another DRS retirement system, and are under age sixty-five:~~

~~(i) Your TRS retirement benefit will be impacted as described in subsections (5) and (6) of this section.~~

~~(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.~~

~~(b) If you retired from TRS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five)) If you return to work after retirement from TRS and another DRS retirement system, see WAC 415-113-300 to determine the effect of returning to work.~~

Note: You may have a choice of returning to membership. See the following WAC sections for more information: 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

~~((9)) **(7) Terms used.**~~

~~(a) "Accrual date" - WAC 415-112-520; RCW 41.32.795, 41.32.855.~~

~~(b) "Eligible position" - RCW 41.32.010.~~

~~(c) "Employer" - RCW 41.32.010.~~

~~(d) "Nonadministrative position" - WAC 415-02-030.~~

~~(e) "Second-class school district" - RCW 28A.300.065.~~

~~(f) "Year."~~

~~(i) For TRS Plan 1, a "year" is July 1st through June 30th.~~

(ii) For TRS Plan 2 and Plan 3, a "year" is January 1st through December 31st.

[Statutory Authority: RCW 41.50.050. WSR 20-01-079, § 415-112-525, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-112-525, filed 8/11/16, effective 9/11/16. Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. WSR 02-02-060, § 415-112-525, filed 12/28/01, effective 1/1/02.]

## WSR 23-20-116

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Board of Nursing Home Administrators)

[Filed October 3, 2023, 4:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-19-058 and 23-03-119.

Title of Rule and Other Identifying Information: Nursing home administrator licensing requirements and retired-active license. The board of nursing home administrators (board) is proposing a new rule to create a retired-active license, and proposing amendments to WAC 246-843-071 Application, 246-843-090 Administrator-in-training program, 246-843-130 Continuing education requirements, 246-843-180 Expired license, and 246-843-231 Temporary practice permits.

Hearing Location(s): On November 13, 2023, at 12:00 p.m., at Washington State Department of Health, Town Center 2, 111 Israel Road S.E., Room 145, Tumwater, WA 98501; or virtual. The virtual portion of the hearing is through Microsoft Teams. The link for the meeting is [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_Njc0YTJhOWUtNGEzMC00YjJjLTg3N2UtMmQyYTkyNTk2ZmEz%40thread.v2/0?](https://teams.microsoft.com/l/meetup-join/19%3ameeting_Njc0YTJhOWUtNGEzMC00YjJjLTg3N2UtMmQyYTkyNTk2ZmEz%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22536272d3-e9d7-4dce-b98d-05a862713300%22%7d)

[context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22536272d3-e9d7-4dce-b98d-05a862713300%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_Njc0YTJhOWUtNGEzMC00YjJjLTg3N2UtMmQyYTkyNTk2ZmEz%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22536272d3-e9d7-4dce-b98d-05a862713300%22%7d). Participants can attend in person at the physical location or virtually through Microsoft Teams.

Date of Intended Adoption: November 13, 2023.

Submit Written Comments to: Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, by November 9, 2023.

Assistance for Persons with Disabilities: Contact Kendra Pitzler, phone 360-236-4723, fax 360-236-2901, TTY 711, email [nha@doh.wa.gov](mailto:nha@doh.wa.gov), by October 27, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal creates, expands, or clarifies licensure requirements in the following ways:

- Clarifies the administrator-in-training (AIT) program requirements as the standard path to licensure including application, reporting, and documentation requirements for board approval.
- Requires applicants renewing an expired license provide proof of completing previously required trainings.
- Expands paths to licensure by increasing access to temporary practice permits and creating a retired active credential.
- Corrects and updates continuing education requirements such as removing HIV/AIDS education and adding health equity continuing education according to recent changes in statute.
- Corrects or removes outdated language and citations as needed without changing the effect of the rule.

Reasons Supporting Proposal: The board's intent with the proposed rule is to increase access and flexibility to encourage continued licensure in this profession. Clearer processes, greater access to a temporary license, and the creation of a retired active status will create professionals who are able to help nursing homes transition between nursing home administrators or assist in other emergency situations.

Statutory Authority for Adoption: RCW 18.52.061, 18.130.050, 18.130.250, and 43.70.613.

Statute Being Implemented: RCW 18.52.061, 18.52.071, 18.130.250, and 43.70.613.

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

Name of Proponent: Board of nursing home administrators, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kendra Pitzler, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4723.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, fax 360-236-2901, TTY 711, email nha@doh.wa.gov.

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 3, 2023

Rosalie M. Romano, Ph.D.  
Chair

## OTS-4645.6

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

**WAC 246-843-071 Application.** (1) An applicant for licensure as a nursing home administrator shall:

(a) Be at least (~~(twenty-one)~~) 21 years old;

(b) Submit to DOH a completed application for licensure provided by DOH that includes all information requested and payment of fees as required in (~~(chapter 246-12 WAC, Part 2)~~) WAC 246-12-020 through 246-12-051 and WAC 246-843-990;

(c) Request the official transcripts of successful completion of a baccalaureate degree to be sent directly to DOH from a recognized institution of higher learning. If transcripts showing successful completion of a baccalaureate degree are not available, the recognized institution of higher learning must submit documentation specifically recognizing that the applicant has completed the requirements for a baccalaureate degree. A "recognized institution of higher learning" is a degree granting institution that is:

(i) Accredited by an organization recognized by the Council for Higher Education Accreditation (CHEA) and is included in the CHEA list recognized accrediting organizations; or



(ii) Accredited by an organization recognized by the United States Department of Education (USDOE) and is included in the USDOE Database of Accredited Postsecondary Institutions and Programs; or

(iii) A foreign institution with a program that the board has found to be the equivalent of programs approved by CHEA or by the USDOE. The transcript must also be evaluated and found to be valid and the academic program the equivalent of programs approved by CHEA or the USDOE, by:

(A) An organization that is a current member of the National Association of Credential Evaluation Services (NACES); or

(B) An organization that is a current member of the Association of International Credential Evaluators, Inc. (AICE); or

(C) An organization that reviews foreign transcripts and is recognized by a Washington state department of health board or program.

~~(d) ((Verification of successful completion of seven hours of AIDS education and training as required in chapter 246-12 WAC, Part 8, (e-))~~ Documentation of having satisfied training requirements including that the applicant:

(i) Has successfully completed an AIT program as described in WAC 246-843-090 and 246-843-091; or

(ii) Has met the requirements for an AIT exemption described in WAC 246-843-093.

~~((f))~~ (e) Documentation that the applicant has successfully passed the examination as described in WAC 246-843-070.

(2) If an applicant is required to complete an AIT program, the applicant may concurrently earn their degree but shall submit proof of enrollment in a degree program at a recognized institution of higher learning. The transcript showing successful completion of the degree, sent directly from the institution, must be received before the applicant is approved to take the current NAB national examination.

(3) An applicant who has HSE designation from NAB may submit verification of the HSE directly from NAB to verify that he or she meets the requirements of subsection (1)(c) and ~~((f))~~ (e) of this section.

(4) An applicant licensed as a nursing home administrator outside the state of Washington may apply for initial licensure through endorsement by meeting the requirements of WAC 246-843-230.

[Statutory Authority: RCW 18.52.061 and 18.130.050. WSR 19-19-050, § 246-843-071, filed 9/13/19, effective 10/14/19. Statutory Authority: RCW 18.52.061, 18.130.050, 18.130.040, 18.130.062, 43.70.041, and chapter 18.52 RCW. WSR 16-17-127, § 246-843-071, filed 8/23/16, effective 9/23/16. Statutory Authority: Chapters 18.52, 34.05 RCW and RCW 18.130.075. WSR 00-01-072, § 246-843-071, filed 12/13/99, effective 1/13/00.]

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

**WAC 246-843-090 Administrator-in-training program.** ~~((To qualify for a nursing home administrator license, an applicant must successfully complete a board approved nursing home administrator-in-training (AIT) program as described below:~~

~~(1))~~ Unless exempt by WAC 246-843-093, an applicant for the original license must complete an administrator-in-training (AIT) program according to this section as part of the original licensure proc-

ess. The board must approve the AIT program before the applicant may begin the training.

(1) To participate in an AIT program, the applicant must submit to the department of health:

(a) In addition to the original license fee, the AIT program fee required in WAC 246-843-990; and

(b) (i) Information on forms provided by the department showing how the AIT program meets the requirements of subsection (2) of this section.

(ii) If the AIT program is less than 1,500 hours, the applicant must also include a resume and explanation of how the applicant meets the relevant requirements in WAC 246-843-091; and

(c) A statement sent directly by the preceptor on a form provided by the department that describes how the preceptor meets the requirements of WAC 246-843-095.

(2) The AIT program must consist of the following:

(a) Be under the guidance and supervision of a qualified preceptor as described in WAC 246-843-095;

(b) Be designed to provide for individual learning experiences and instruction based upon the person's academic background, training, and experience;

(c) Provide for a broad range of experience with a close working relationship between preceptor and AIT. A sponsoring facility of less than ~~((fifty))~~ 50 beds will be considered for an AIT program only if there is a board approved plan to broaden the AIT experience with an equal percentage of experience in a larger facility under the guidance and supervision of a qualified preceptor as described in WAC 246-843-095;

(d) Be described in a prospectus signed by the preceptor. The prospectus must include a description of the rotation through departments. The board must approve the prospectus before the AIT program start date.

~~((2))~~ The ~~((AIT program))~~ prospectus shall include the following components:

~~((a))~~ (i) A minimum of ~~((ninety))~~ 90 percent of the required AIT program hours are spent in a rotation through each department of a resident occupied nursing home licensed under chapter 18.51 RCW or a Washington state veterans home established under chapter 72.36 RCW ~~((b))~~; and

(ii) The remaining ~~((ten))~~ 10 percent of the AIT program will include:

~~((i))~~ (A) A written project assignment including at least one problem-solving assignment to improve the nursing home or nursing home procedures. A description of the project must be submitted in writing to the board and approved before the AIT program start date. The description of the project should indicate the definition of the project and method of approach such as data gathering. A project report that includes possible alternatives, conclusions, and final recommendations to improve the facility or procedure is to be submitted to the board for approval at least ~~((ten))~~ 10 days before the scheduled end date of the AIT program;

~~((ii))~~ (B) Planned reading and writing assignments as designated by the preceptor; and

~~((iii))~~ (C) Other planned learning experiences including learning about other health and social services agencies in the community.

~~(3) ((The AIT program must be approved by the board before the AIT may begin the program.~~

~~(4) Quarterly written reports to the board shall include a detailed outline of AIT activities during the reporting period. Reports must be submitted by both the AIT and preceptor.~~

~~(5)) Preceptors of approved AIT programs shall submit quarterly reports to the department as follows:~~

~~(a) If the approved AIT program has more than one preceptor, each preceptor shall submit a quarterly report.~~

~~(b) The preceptor shall submit the final report to the department at least 10 days before the scheduled end date of the AIT program.~~

~~(c) Each quarterly report must:~~

~~(i) Be on forms provided by the department;~~

~~(ii) Describe a detailed outline of AIT activities during the reporting period which includes:~~

~~(A) A document completed by the AIT and signed by the preceptor;~~  
and

~~(B) A document completed and signed by the preceptor.~~

~~(4) Changes in the AIT program, including a change of preceptor, facility or topic, must be immediately reported in writing to the board. A request for change must be in writing and explain why the change is needed. ((The request must be co-signed by the AIT and the approved preceptor. In cases where the preceptor is no longer available, the request may be signed by the governing body. Only two changes for the duration of the AIT program will be allowed.~~

~~(6)) (5) A site visit by a board member will take place before the program plan is considered complete.~~

~~((7)) (6) The AIT program must be completed to the board's satisfaction as a condition of licensure. The board may withdraw approval or alter conditions under which approval was given if the board finds that the approved program has not been or is not being followed.~~

[Statutory Authority: RCW 18.52.061 and 18.130.050. WSR 19-19-050, § 246-843-090, filed 9/13/19, effective 10/14/19. Statutory Authority: RCW 18.52.061, 18.130.050, 18.130.040, 18.130.062, 43.70.041, and chapter 18.52 RCW. WSR 16-17-127, § 246-843-090, filed 8/23/16, effective 9/23/16. Statutory Authority: Chapters 18.52 and 34.05 RCW. WSR 00-01-070, § 246-843-090, filed 12/13/99, effective 1/13/00. Statutory Authority: RCW 18.52.061. WSR 95-07-128, § 246-843-090, filed 3/22/95, effective 4/22/95; WSR 93-23-034, § 246-843-090, filed 11/10/93, effective 12/11/93; WSR 93-13-004 (Order 371B), § 246-843-090, filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 18.52.100. WSR 91-24-050 (Order 217B), § 246-843-090, filed 11/27/91, effective 12/28/91; WSR 91-06-060 (Order 141B), recodified as § 246-843-090, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 18.52.100(14). WSR 87-02-008 (Order PM 633), § 308-54-090, filed 12/29/86; Order PL 260, § 308-54-090, filed 12/10/76; Order PL 164, § 308-54-090, filed 3/27/74, effective 1/1/75; Order PL 107, § 308-54-090, filed 3/3/71.]

AMENDATORY SECTION (Amending WSR 21-17-079, filed 8/12/21, effective 10/10/21)

**WAC 246-843-130 Continuing education requirements.** (1) A licensed nursing home administrator shall demonstrate completion of ~~((thirty-six))~~ 36 hours of continuing education every two years and

comply with (~~chapter 246-12 WAC, Part 7~~) WAC 246-12-170 through 246-12-240.

(2) Continuing education approved by the National Continuing Education Review Service (NCERS) is acceptable for continuing education credit.

(3) Continuing education that is not approved by NCERS must meet the following requirements:

(a) The basic methods of continuing education learning are:

- (i) Seminars;
- (ii) Teleconferencing;
- (iii) Webinars; and
- (iv) Self-study programs.

(b) Continuing education courses shall consist of a minimum of one hour of instruction. Hours are based upon clock hours and are calculated in half hour increments. College courses are rated at (~~five-teen~~) 15 hours per each semester unit and (~~ten~~) 10 hours per each quarter credit.

(c) Continuing education must relate to nursing home administration, be designed to promote continued knowledge and skills with nursing home administration standards, and improve and enhance professional competencies. Continuing education must fit within the following subjects:

- (i) Resident centered care;
- (ii) Human resources;
- (iii) Finance;
- (iv) Environment;
- (v) Leadership and management;
- (vi) Suicide prevention;

(vii) Cultural competency training, including health equity as required in subsection (4) of this section;

(viii) Laws relating to Washington state nursing homes;

(ix) Pandemic response and compliance measures. Examples include, but are not limited to, infection control measures, resident engagement, personal protective equipment procurement and training, emergency staffing, writing and updating policies and procedures pertaining to pandemic management, and other pandemic-related training.

(d) The licensee shall retain proof of course completion. To receive full credit, attendees shall attend the full program. The maximum number of hours allowed for continuing education is (~~twelve~~) 12 hours per day.

(~~(e) Until December 31, 2022, licensees due to demonstrate completion of continuing education may accrue up to thirty-six of those hours in pandemic response and compliance measure subjects described in (c)(ix) of this subsection. During this time, if proof of course completion is not provided for pandemic response and compliance measure courses earned under self-study programs as allowed under (a)(iv) of this subsection, the licensee may sign an attestation on a form provided by the department.~~)

(4) A licensee must complete a minimum of two hours of health equity education every four years according to the requirements of WAC 246-12-830. The two hours may count toward the total 36 hours required for a continuing education cycle. Health equity means all people have the same opportunities and equal access in order to attain their full health potential regardless of the color of their skin, ancestry, ethnicity, level of education, gender identity, sexual orientation, age, religion, socioeconomic status, the job they have, the neighborhood they live in, or their ability status.

(5) Continuing education credit of two hours per month may be granted to a preceptor of an administrator-in-training program.

~~((5))~~ (6) Continuing education credit of a maximum of two hours per month may be granted for serving as a board member for the board of nursing home administrators.

~~((6))~~ (7) Within ~~((one hundred eighty))~~ 180 days after becoming licensed, a nursing home administrator shall attend a board approved course on laws relating to nursing homes in Washington. The board will grant retroactive credit to those licensees who obtain the required training as administrators-in-training under WAC 246-843-090. The state law training course consists of a minimum of a six-hour program, with formal training objectives, that covers the requirements of chapter 18.52 RCW and essential areas of laws that apply to nursing homes regulated by the department of social and health services under chapter 388-97 WAC to include:

- (a) Resident services, medical and social;
- (b) Resident rights, including resident decision making, informed consent, advance directives and notices to residents;
- (c) Enforcement;
- (d) Criminal history inquiries;
- (e) Differences between federal and state law.

[Statutory Authority: RCW 18.52.061. WSR 21-17-079, § 246-843-130, filed 8/12/21, effective 10/10/21. Statutory Authority: RCW 18.52.061 and 18.130.050. WSR 19-19-050, § 246-843-130, filed 9/13/19, effective 10/14/19. Statutory Authority: RCW 18.52.061, 18.130.050, 18.130.040, 18.130.062, 43.70.041, and chapter 18.52 RCW. WSR 16-17-127, § 246-843-130, filed 8/23/16, effective 9/23/16. Statutory Authority: Chapters 18.52 and 34.05 RCW. WSR 00-01-074, § 246-843-130, filed 12/13/99, effective 1/13/00. Statutory Authority: RCW 18.52.100. WSR 91-24-050 (Order 217B), § 246-843-130, filed 11/27/91, effective 12/28/91; WSR 91-06-060 (Order 141B), recodified as § 246-843-130, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 18.52.100(11). WSR 88-23-038 (Order PM 791), § 308-54-130, filed 11/9/88. Statutory Authority: RCW 18.52.100(14) and 18.52.110(2). WSR 82-20-092 (Order PL 407), § 308-54-130, filed 10/6/82. Statutory Authority: RCW 18.52.100(14) and 18.52.110. WSR 80-01-057 (Order PL 328), § 308-54-130, filed 12/20/79; Order PL 265, § 308-54-130, filed 3/21/77; Order PL 260, § 308-54-130, filed 12/10/76; Order PL 107, § 308-54-130, filed 3/3/71.]

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

**WAC 246-843-180 Expired license.** (1) To return to active status, the nursing home administrator with an expired license shall ~~((meet))~~ provide the department of health an application meeting the requirements of WAC 246-12-040.

(2) If the license has been expired for one year or more, the applicant must also submit proof of completing the course required by WAC 246-843-130(7) if the applicant did not do so prior to the license expiring.

(3) If the license has been expired for five years or more, the ~~((nursing home administrator))~~ applicant shall also meet one of the following requirements:

(a) Provide proof of an active status license as a nursing home administrator from another state that has requirements that are substantially equivalent to Washington requirements;

(b) Provide proof that the applicant has been in active practice as a licensed nursing home administrator in another jurisdiction during that time; or

(c) Successfully pass the current licensing examination as described in WAC 246-843-170.

[Statutory Authority: RCW 18.52.061 and 18.130.050. WSR 19-19-050, § 246-843-180, filed 9/13/19, effective 10/14/19. Statutory Authority: RCW 18.52.061, 18.130.050, 18.130.040, 18.130.062, 43.70.041, and chapter 18.52 RCW. WSR 16-17-127, § 246-843-180, filed 8/23/16, effective 9/23/16. Statutory Authority: RCW 18.52.061. WSR 02-23-070, § 246-843-180, filed 11/19/02, effective 2/17/03. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-843-180, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.52.061. WSR 93-13-004 (Order 371B), § 246-843-180, filed 6/3/93, effective 7/4/93. Statutory Authority: RCW 18.52.100. WSR 91-24-022 (Order 216B), § 246-843-180, filed 11/25/91, effective 12/26/91; WSR 91-06-060 (Order 141B), recodified as § 246-843-180, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 18.52.100(14). WSR 86-01-086 (Order PL 576), § 308-54-180, filed 12/18/85. Statutory Authority: RCW 18.52.100. WSR 80-08-066 (Order 348), § 308-54-180, filed 7/1/80; Order PL 260, § 308-54-180, filed 12/10/76; Order PL 107, § 308-54-180, filed 3/3/71.]

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

**WAC 246-843-231 Temporary practice permits.** (1) An applicant seeking permanent licensure who satisfies all licensing requirements other than a fingerprint-based national background check may receive a temporary practice permit by satisfying requirements listed in WAC 246-12-050.

~~(2) ((Temporary practice permits for applicants seeking licensure for interim placement at specific facilities.~~

~~(a-)) A temporary practice permit for interim placement at specific facilities may be issued to an applicant who ((meets the following conditions)):~~

~~(a) Has no violations identified in the Washington criminal background check; and~~

~~(b) (i) Holds an unrestricted active license in another state ((~~+~~ ~~ii~~)) where the license holder is not subject to denial of a license or issuance of a conditional or restricted license; ((and~~

~~(iii) There are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions including receipt by DOH of a completed Federal Bureau of Investigation (FBI) fingerprint card.~~

~~(b-)) or~~

~~(ii) Meets one of the requirements for an AIT exemption described in WAC 246-843-093.~~

~~(3) The temporary practice permit for interim placement allows the applicant to work in the state of Washington as a nursing home administrator within the full scope of practice during the time specified on the permit. ((The temporary practice permit grants the appli-~~

~~cant a license to practice within the full scope of practice as a nursing home administrator with the following conditions:~~

~~(i) A temporary practice permit is valid only for the specific nursing home for which it is issued unless otherwise approved by the board;~~

~~(ii) A temporary permit holder))~~

~~(4) A holder of a temporary permit for interim practice shall consult with a Washington state licensed nursing home administrator with whom they have a written agreement for consultation.~~

~~((c) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when one of the following occurs:~~

~~(i) The permit holder departs from the nursing home, unless otherwise approved by the board;~~

~~(ii) One hundred eighty days after the temporary practice permit is issued.~~

~~(d)) (5) A temporary permit for interim practice expires 180 days after it is issued and will not be renewed, reissued, or extended.~~

~~(6) To receive a temporary practice permit for interim placement, the applicant shall submit to DOH:~~

~~((i)) (a) Fees and a completed application for the permit;~~

~~((ii) Verification from each state in which the applicant is currently licensed and is in good standing as a nursing home administrator)) (b) Through use of state or national online data banks or records, verification of the applicant's currently held state nursing home administrator's license in good standing; and~~

~~((iii)) (c) A written agreement for consultation with a Washington state licensed nursing home administrator.~~

[Statutory Authority: RCW 18.52.061 and 18.130.050. WSR 19-19-050, § 246-843-231, filed 9/13/19, effective 10/14/19. Statutory Authority: RCW 18.52.061, 18.130.050, 18.130.040, 18.130.062, 43.70.041, and chapter 18.52 RCW. WSR 16-17-127, § 246-843-231, filed 8/23/16, effective 9/23/16. Statutory Authority: RCW 18.52.061, 18.130.064, and 18.130.075. WSR 15-02-034, § 246-843-231, filed 12/30/14, effective 1/30/15. Statutory Authority: Chapters 18.52, 34.05 RCW and RCW 18.130.075. WSR 00-01-072, § 246-843-231, filed 12/13/99, effective 1/13/00.]

## NEW SECTION

**WAC 246-843-335 Retired active credential.** (1) A licensed nursing home administrator may place their credential in "retired active" status by meeting the requirements of this section.

(2) A licensed nursing home administrator who holds a retired active credential may practice not more than 90 days a year. This limit may be exceeded in emergent emergency circumstances including, but not limited to, earthquakes, floods, times of declared war, or other federal or state emergencies.

(3) To obtain a retired active credential, a licensed nursing home administrator must:

(a) Meet the requirements in WAC 246-12-120; and

(b) Pay the appropriate fee in WAC 246-843-990.

(4) To renew a retired active credential, the licensed nursing home administrator must:

(a) Meet the requirements in WAC 246-12-130.

(b) Pay the appropriate fee in WAC 246-843-990.

(c) Complete 36 hours of continuing nursing education within a two-year period prior to the renewal of licensure in compliance with WAC 246-843-130.

(d) Renew their retired active credential every year on their birthday.

(5) To return to active status, the licensed nursing home administrator must meet the requirements in WAC 246-12-140. The active renewal fee is in WAC 246-843-990.

(6) A licensed nursing home administrator who holds a retired active credential is subject to a continuing competency audit as outlined in WAC 246-12-170 through 246-12-240.

[]



## WSR 23-20-120

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed October 3, 2023, 5:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-052.

Title of Rule and Other Identifying Information: Substance use disorder professional (SUDP) certification—Reducing barriers for pharmacists and applicants with a national certification.

The department of health (department) is proposing amending WAC 246-811-070, 246-811-076, and 246-811-300 in chapter 246-811 WAC, Substance use disorder professionals and substance use disorder professional trainees, to reduce barriers to certification. Proposed changes include removing the requirement to verify educational coursework for applicants with a national certification in WAC 246-811-070, making pharmacists eligible for the alternative training pathway in WAC 246-811-076, and removing the obsolete AIDS training from the list of probationary license requirements in WAC 246-811-300.

Hearing Location(s): On November 20, 2023, at 2:00 p.m. A virtual public hearing, without a physical meeting space, will be held. Register in advance for this webinar <https://us02web.zoom.us/join/91012920000>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 15, 2023.

Submit Written Comments to: Ted Dale, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504-7850, <https://fortress.wa.gov/doh/policyreview/>, by November 14, 2023.

Assistance for Persons with Disabilities: Contact Ted Dale, phone 360-236-2991, TTY 711, email [ted.dale@doh.wa.gov](mailto:ted.dale@doh.wa.gov), [www.doh.wa.gov](http://www.doh.wa.gov), by October 31, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments will reduce barriers to becoming credentialed as an SUDP and encourage workforce growth.

Proposed amendments to WAC 246-811-070 will remove the requirement that the department verify coursework for applicants with a national certification. This change will remove a significant barrier to out-of-state professionals applying for certification in Washington, as their education often differs from Washington's detailed course requirements.

Proposed amendments to WAC 246-811-076 will add pharmacists to the list of professionals eligible for the alternative training pathway. This will facilitate pharmacists obtaining expertise in substance use and addiction, which will increase quality of patient care. Additionally, the department will remove osteopathic physician assistants from the list, consistent with SHB 2378, which repealed the profession.

Proposed amendments to WAC 246-811-300 will remove the AIDS education training from the list of probationary license requirements, consistent with ESHB 1551, which repealed statutory authority for mandatory AIDS education trainings.

Reasons Supporting Proposal: The SUDP workforce plays an important role in providing treatment and support to individuals who struggle with substance use disorder. SUDP services are in high demand in Washington, but applicants can encounter significant barriers in be-

coming credentialed. Making the proposed amendments will lower barriers to certification, improve patient care, and comply with legislation.

Statutory Authority for Adoption: RCW 18.205.060.

Statute Being Implemented: ESHB 1551 (chapter 76, Laws of 2020); SHB 2378 (chapter 80, Laws of 2020).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ted Dale, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2991.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ted Dale, Office of Health Professions, P.O. Box 47850, Olympia, WA 98504-7850, phone 360-236-2991, TTY 711, email ted.dale@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of Exemption(s): All proposed rule changes only affect individual professional credentials, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

October 3, 2023  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

## OTS-4865.1

AMENDATORY SECTION (Amending WSR 16-14-052, filed 6/29/16, effective 7/30/16)

**WAC 246-811-070 National certification.** (1) A person who is certified through the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) or the International Certification and Reciprocity Consortium (ICRC) as an alcohol and drug counselor (ADC) or advanced alcohol and drug counselor (AADC), is considered to meet the experience requirements of WAC 246-811-046.

(2) A person who is certified through NAADAC or ICRC as an ADC or AADC is considered to have met the education requirements of WAC 246-811-030(2). (~~Verification of the additional forty-five quarter or thirty semester credits as required in WAC 246-811-030(1) will be required upon application to the department.~~)

(3) Verification of certification must be sent directly to the department from NAADAC or ICRC.

[Statutory Authority: RCW 18.205.100 and 18.205.060. WSR 16-14-052, § 246-811-070, filed 6/29/16, effective 7/30/16. Statutory Authority:

Chapter 18.205 RCW. WSR 09-14-111, § 246-811-070, filed 6/30/09, effective 7/1/09. Statutory Authority: RCW 18.205.060(1). WSR 99-13-084, § 246-811-070, filed 6/14/99, effective 7/15/99.]

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-076 Eligibility for certification through alternative training.** A practitioner listed in subsections (1) through (7) of this section who holds an active license in good standing may apply for certification as a substance use disorder professional using alternative training under WAC 246-811-077 or 246-811-078:

- (1) Advanced registered nurse practitioner under chapter 18.79 RCW;
- (2) Marriage and family therapists, mental health counselor, advanced social worker, or independent clinical social worker under chapter 18.225 RCW;
- (3) Psychologist under chapter 18.83 RCW;
- (4) Osteopathic physician under chapter 18.57 RCW;
- (5) ~~((Osteopathic physician assistant under chapter 18.57A RCW;~~
- ~~(6-))~~ Physician under chapter 18.71 RCW; ~~((or~~
- ~~(7-))~~ (6) Physician assistant under chapter 18.71A RCW; or
- (7) Pharmacist under chapter 18.64 RCW.

[Statutory Authority: 2019 c 444, 2019 c 446, 2019 c 351, and RCW 18.19.050, 18.205.060, 18.225.040, 43.70.110, and 43.70.250. WSR 20-12-074, § 246-811-076, filed 6/1/20, effective 7/2/20. Statutory Authority: RCW 18.205.100 and 18.205.060. WSR 16-14-052, § 246-811-076, filed 6/29/16, effective 7/30/16.]

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-811-300 Probationary license.** (1) The department shall issue a probationary license to out-of-state applicants seeking licensure in Washington state for substance use disorder professional according to the conditions and restrictions of the reciprocity program established RCW 18.205.140 and this chapter.

(2) The out-of-state license must be from a state or territory identified on a list published by the department as eligible for reciprocity for the purposes of a probationary license for the particular behavioral health profession.

(3) An initial probationary license is valid for one year. To receive an initial probationary license, the applicant must submit to the department a completed application to include:

- (a) Verification of their out-of-state license; and
- (b) The fee according to WAC 246-811-990.

(4) A probationary license may be renewed a single time and is valid for one year after the date of renewal. To renew a probationary license, the applicant must submit to the department a completed application to include:

- (a) Completion of suicide assessment, treatment, and management training according to WAC 246-811-280(1); and

(b) (~~(AIDS education according to WAC 246-811-075; and~~  
~~(e-))~~) The fee according to WAC 246-811-990.

(5) Continuing education. With the exception of the requirements in subsection (4) of this section, continuing education requirements will apply once a probationary licensee transitions to a full license.

(6) Approved supervision. If the department determines a probationary licensee must complete supervised hours of experience as a condition for full licensure, the licensee must complete the stated hours under an approved supervisor according to the conditions of this chapter.

[Statutory Authority: 2019 c 444, 2019 c 446, 2019 c 351, and RCW 18.19.050, 18.205.060, 18.225.040, 43.70.110, and 43.70.250. WSR 20-12-074, § 246-811-300, filed 6/1/20, effective 7/2/20.]

**WSR 23-20-121**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R2023-06—Filed October 4, 2023, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-138.

Title of Rule and Other Identifying Information: Health care benefit manager (HCBM) registration.

Hearing Location(s): On November 7, 2023, at 3:00 p.m., via Zoom. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/health-care-benefit-manager-registration-r-2023-06>.

Date of Intended Adoption: November 13, 2023.

Submit Written Comments to: Sydney Rogalla, P.O. Box 40260, Olympia, WA 98504-0260, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109, by November 9, 2023.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-725-7013, TTY 360-586-0241, email [katie.bennett@oic.wa.gov](mailto:katie.bennett@oic.wa.gov), by November 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, the administrative burden for HCBM registration is burdensome and requires a significant amount of documentation. The purpose of this proposed rule is to decrease the burden and streamline it to work more efficiently for registration and renewal. It will also require that HCBMs disclose any federal violations, as the current rule is worded so that they only disclose state level violations. This will help create consistency and transparency for HCBMs when they register and renew in Washington state.

Reasons Supporting Proposal: This will create a more efficient process of registration and renewal for HCBM registration, as well as improve transparency with the disclosure of any federal or state violations.

Statutory Authority for Adoption: RCW 48.02.060, 48.200.280(6), 34.05.485 (1)(c), 48.02.100.

Statute Being Implemented: RCW 48.200.280(6).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Sydney Rogalla, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98501, 360-725-7042; Implementation: John Haworth, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7000; and Enforcement: Charles Malone, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7000.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email [simon.casson@oic.wa.gov](mailto:simon.casson@oic.wa.gov).

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Chapter 19.85 RCW states that "... an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry<sup>1</sup> ..." The small business economic impact statement (SBEIS) must include "... a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements ... to determine whether the proposed rule will have a disproportionate cost impact on small businesses."

This rule proposal is exempt from requirements of the Regulatory Fairness Act. Based on findings in the cost-benefit analysis, the costs of compliance estimated by OIC are minor costs on businesses as defined by RCW 19.85.020(2).

The proposed rule will streamline the registration process for HCBMs, reducing excess documentation requirements. Notably, HCBMs will not be required to submit the NAIC Form 11 biographical affidavit and the NAIC Approved Third Party Vendor Background Report. The Approved Third Party Vendor Background Report is currently only required when requested. Under current regulation, submitting the required documents incurs a cost for the HCBMs in terms of employee time. It can take a significant amount of time for an individual to gather and compile all the required elements in the two forms. The streamlining of this process is a benefit for registering entities.

Additionally, HCBMs will be required to report federal violations in addition to Washington and other state violations as a part of the registration process. Assuming reputable HCBMs are not committing violations, this should not be a significant cost for the entities when registering.

Overall, this rule streamlines the HCBM registration process, providing a net benefit to registering entities. OIC has applied a default cost of compliance (\$100) for both health insurance carriers and PBMs/HCBMs/TPAs. Health insurance carriers are included as they are responsible for the activities of HCBMs conducted on their behalf (per WAC 284-180-110(2)). Although it is unlikely that this rule would result in even the full default cost of compliance, cost of compliance does not exceed the minor cost estimate thresholds for either of the entities examined.

2019 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	Average Number of Employees/Business	Minor Cost Estimate*
524114	\$100.00	Direct health and medical insurance carriers	113	\$251,392.70
524292	\$100.00	Pharmacy benefit management and other third party administration of insurance and pension funds	36	\$28,510.46

\* Minor cost estimate: The greater of one percent of annual payroll or 0.3 percent of revenue.

<sup>1</sup> Chapter 19.85.030: <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>

A copy of the detailed cost calculations may be obtained by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, email [simon.casson@oic.wa.gov](mailto:simon.casson@oic.wa.gov).

October 4, 2023  
 Mike Kreidler  
 Insurance Commissioner

## OTS-4928.2

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-210 Registration and renewal fees.** (1) ~~The ((registration, renewal and oversight activities for health care benefit managers must be))~~ commissioner must establish fees for registration and renewal in an amount that ensures the program for the registration, renewal, and oversight activities of the health care benefit managers is self-supporting. Each health care benefit manager must contribute a sufficient amount to the commissioner's regulatory account to pay for the reasonable costs, including overhead, of regulating health care benefit managers.

(2) The initial registration fee is ~~((two hundred dollars))~~ \$200.

(3) For the renewal fee, the commissioner will charge a proportional share of the annual cost of the insurance commissioner's renewal and oversight activities ~~((to all))~~ of health care benefit managers. ~~((The))~~ Each health care benefit managers' proportional share ~~((shall))~~ of the program annual operating costs will be based on their Washington state annual gross ~~((health care benefit manager business))~~ income of their health care benefit manager business for the previous calendar year. The ~~((minimum))~~ renewal fee is ~~((five hundred dollars))~~ \$500, at a minimum, and may increase based on a proportional share of each health care benefit managers gross income as reported to the insurance commissioner.

(4) If an unexpended balance of health care benefit manager registration and renewal funds remain in the insurance commissioner's regulatory account at the close of a fiscal year, the commissioner will carry the unexpended funds forward and use them to reduce future renewal fees.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, § 284-180-210, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-210, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-220 Health care benefit manager registration.** (1) ~~((Beginning January 1, 2017, through December 31, 2021, to conduct business in this state, pharmacy benefit managers must register with the commissioner and must annually renew the registration.~~

~~((2-))~~ Beginning January 1, 2022, and thereafter, to conduct business in this state, health care benefit managers must register and have an approved registration with the commissioner. ~~((To continue conducting business in this state, previously registered pharmacy benefit managers must submit an application and registration fee to register as a health care benefit manager. Health care benefit managers must annually renew their registration.~~

~~(3))~~ (2) Health care benefit managers must apply for registration using the commissioner's electronic system, which is available at [www.insurance.wa.gov](http://www.insurance.wa.gov).

~~((4))~~ (3) The registration period is valid from the date of approval of registration through June 30th of the same fiscal year.

~~((5))~~ (4) The registration application is not complete until the commissioner receives the complete registration form, any supporting documentation if required by the commissioner, and paid the ~~((correct))~~ \$200 registration fee.

~~((6))~~ (5) A health care benefit manager may conduct business in this state ~~((, after the health care benefit manager receives))~~ after receiving notice of approval of the registration application from the commissioner.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, § 284-180-220, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-220, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-230 Health care benefit manager renewal.** (1) Health care benefit managers ~~((must))~~ annually renew their registrations and pay ~~((the health care benefit manager's))~~ their renewal fee using the commissioner's electronic system, which is available at [www.insurance.wa.gov](http://www.insurance.wa.gov).

(2) Health care benefit managers ~~((must-renew))~~ renewing their registrations ~~((by:~~

~~(a))~~ must, no later than March 1st of each year, ((submitting a complete renewal form)) submit an electronic renewal report and supporting documents for approval to include:

~~((i) The health care benefit manager's))~~ (a) Their Washington state annual gross ~~((health care benefit manager business))~~ income for health care benefit manager business for the previous calendar year; and

~~((ii))~~ (b) Any additional information, including supporting documents, as required by the commissioner.

~~((b) No later than July 15th of each year, pay the renewal fee as invoiced by the commissioner.~~

~~(e))~~ (3) Health care benefit managers may amend their annual gross income report for the previous year after the date of submission, but may not amend the report later than May 31st, of the submission year.

(4) On or before June 1st of each year, the commissioner will calculate and set the renewal fees for the ((upcoming fiscal year for)) next July 1st through June 30th fiscal year. Invoices for the renewal fees and electronic payments will be available through the insurance commissioner's electronic filing and payment center. Renewal fee payments are due by July 15th of each year.

~~((3))~~ (5) The renewal application is not complete until the commissioner receives the complete renewal ((form)) report, supporting documentation if required by the commissioner, and the ((correct)) payment of the invoiced renewal fee.



~~((4)) Failure to timely submit a completed renewal form and fees may result in delayed renewal or nonrenewal in addition to potential violations if a health care benefit manager provides services without being registered.~~

~~(5))~~ (6) Upon successful completion, the health care benefit manager will receive notice of approval of the renewal application from the commissioner.

~~((6) The renewal))~~ (7) Failure to timely submit a completed renewal report and fee may result in a delayed renewal or nonrenewal in addition to potential violations if a health care benefit manager provides services without being registered.

(8) Each renewed registration is valid for one fiscal year from July 1st through June 30th fiscal year.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, § 284-180-230, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-230, filed 12/20/16, effective 1/1/17.]

AMENDATORY SECTION (Amending WSR 21-02-034, filed 12/29/20, effective 1/1/22)

**WAC 284-180-240 Providing and updating registration information.**

(1) ~~((At the time of registration,))~~ When registering a health care benefit manager must ~~((submit an application))~~ apply with an affidavit affirming its accuracy. ((In the)) An application ~~((,))~~ for registering as a health care benefit manager must provide for:

(a) The legal name as well as any ~~((and all))~~ additional names that it uses to conduct business;

(b) The names of ~~((all))~~ persons and entities with any ownership or controlling interests, including stockholders, officers and directors, or limited liability company members, managers and officers in the health care benefit manager, ((along with completed NAIC Form 11 biographical affidavits and, if requested, an NAIC Approved Third-Party Vendor Background Report;

~~(c) Tax identification numbers;~~

~~(d) Other))~~ and the identity of any entity for which the health care benefit manager has a controlling interest;

(c) A list of tax identification numbers and business licenses and registrations ((that the health care benefit manager has held and those)) that are active;

~~((e))~~ (d) Identifying any areas of specialty, such as a pharmacy benefit management, radiology benefit management, laboratory benefit management, mental health care benefit management, or any other areas of specialty identified in the application;

~~((f))~~ (e) Contact information for communications regarding registration, renewal and oversight activities, ((including)) to include name of the contact person, address, phone number, ((name of the contact person for the health care benefit manager,)) and valid email address;

~~((g))~~ (f) Name and contact information for the person the health care benefit manager has designated as responsible for compliance with state and federal laws to include name of the contact person, address, phone number, and valid email address;

~~((h))~~ (g) Identify if the health care benefit manager has committed any violations in this or any state or been the subject of an order from a ~~((department of insurance or other state agency))~~ any federal or state agency or court; and

~~((i))~~ (h) Any additional information requested by the commissioner.

(2) Registered health care benefit managers must ~~((ensure that))~~ provide any material change in the information ~~((that they disclosed when they registered))~~ filed with the commissioner ~~((remains current by notifying the commissioner of any changes or additions))~~.

(a) This information includes, but is not limited to:

(i) Any ~~((and all))~~ additional names that the health care benefit manager uses to conduct business; and

(ii) The contact's name and email address for official communications between the commissioner and the health care benefit manager as required in subsection (1)(f) of this section.

(b) Any change in the information provided to obtain ~~((or))~~, renew, nonrenew, or surrender a registration as a health care benefit manager is a material change and must be reported to the commissioner within ~~((thirty))~~ 30 days of ~~((any))~~ the change ~~((, by the health care benefit manager using the commissioner's electronic system))~~.

(c) Any amendments to its annual renewal reports including the reported annual gross income must be reported to the commissioner no later than May 31st. Amended annual renewal reports may be accepted after review by the commissioner.

[Statutory Authority: RCW 48.02.060 and 48.200.900. WSR 21-02-034, § 284-180-240, filed 12/29/20, effective 1/1/22. Statutory Authority: RCW 48.02.060, 48.02.220 and chapter 19.340 RCW. WSR 18-13-023, § 284-180-240, filed 6/8/18, effective 7/9/18. Statutory Authority: RCW 48.02.060, 19.340.010, 19.340.030, 19.340.100, 19.340.110, and 2016 c 210 §§ 1 and 2 through 7. WSR 17-01-139 (Matter No. R 2016-07), § 284-180-240, filed 12/20/16, effective 1/1/17.]

**WSR 23-20-123**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R2023-01—Filed October 4, 2023, 8:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-110.

Title of Rule and Other Identifying Information: Implementation of SHB 1266 (chapter 27, Laws of 2023).

Hearing Location(s): On November 8, 2023, at 9:00 a.m., via Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website <https://www.insurance.wa.gov/implementation-shb-1266-r-2023-01>.

Date of Intended Adoption: November 10, 2023.

Submit Written Comments to: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109, by November 9, 2023.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email [Katie.Bennett@oic.wa.gov](mailto:Katie.Bennett@oic.wa.gov), by November 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OIC is considering rule making to amend current WAC to align with SHB 1266 (chapter 27, Laws of 2023). In doing so, it should provide clarity to insurance producers on which address of record OIC would utilize when communicating with them.

Reasons Supporting Proposal: SHB 1266 (chapter 27, Laws of 2023) clarified how OIC may communicate with licensees. OIC is considering rules to update what address of record OIC may use when communicating with licensees.

Statutory Authority for Adoption: RCW 48.02.060 and 48.17.005.

Statute Being Implemented: Chapter 27, Laws of 2023.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: David Forte, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98501, 360-725-7268; Implementation: Todd Dixon, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7000; and Enforcement: Charles Malone, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7000.

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

A cost-benefit analysis is not required under RCW 34.05.328. OIC has determined that under RCW 34.05.328 (5)(b)(iv), the content of the rule is explicitly and specifically dictated by statute. Because the content of this rule is specifically dictated by chapter 27, Laws of 2023, a cost-benefit analysis is not required.

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

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

Explanation of exemptions: OIC has determined that under RCW 19.85.025(3), the content of the rule is explicitly and specifically dictated by statute (provided under RCW 34.05.210 (4)(e)). Because the content of this rule is specifically dictated by SHB 1266, a small business economic impact statement is not required. SHB 1266, signed

into law in 2023, clarified how OIC may communicate with licensees. This rule making aligns which address of record OIC will rely on to communicate with licensees. The proposed rule adopts language from SHB 1266 to align both WAC 284-17-005 and 284-17-065 with statute. The content of the rule is specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

October 4, 2023

Mike Kreidler

Insurance Commissioner

## OTS-4825.1

AMENDATORY SECTION (Amending WSR 11-04-067, filed 1/28/11, effective 2/28/11)

**WAC 284-17-005 Address of record.** (1) The address of record used by the commissioner will be:

(a) ~~((For disciplinary orders,))~~ The last U.S. mailing address provided by the person or business entity to the commissioner (~~(~~

~~(b) For all other matters, the last email address provided by the person or business entity to the commissioner. This will be the email address listed in the mailing address section of the commissioner's licensing data base [database].)~~ for all notices, orders, or written communication, including any notification of investigation, notification of audit and findings resulting from such audit, or written communication pursuant to RCW 48.17.475 (2) (c) (ii).

(b) The last email address of record, listed in the mailing address section of the commissioner's licensing database, may only be used, if:

(i) The communication is not required to be sent to the person's mailing address pursuant to RCW 48.17.450(2) or 48.15.103(4);

(ii) The person has affirmatively consented to receive communications from the commissioner by email; and

(iii) The email from the commissioner does not require a response.

NOTE: However, if a response is required by the commissioner, then the email must comply with the requirements of RCW 48.17.475 (2)(b) or 48.15.103 (8)(b), whichever is applicable, before it is sent.

(2) Licensees must advise the commissioner of any change of address within ~~((thirty))~~ 30 days after a change of address. This includes any change in the person's residence, mailing, business or email address. Failure to advise the commissioner of a change of address may subject a licensee to disciplinary action under RCW 48.17.530 and 48.17.560.

[Statutory Authority: RCW 48.15.015 and 48.17.005. WSR 11-04-067 (Matter No. R 2010-07), § 284-17-005, filed 1/28/11, effective 2/28/11. Statutory Authority: RCW 48.02.060, 48.17.005. WSR 09-02-073 (Matter No. R 2008-06), § 284-17-005, filed 1/6/09, effective 7/1/09.]

AMENDATORY SECTION (Amending WSR 11-04-067, filed 1/28/11, effective 2/28/11)

**WAC 284-17-065 Required email address for licensing transactions.** (1) Each applicant, individual or business entity licensee, insurance education provider, and insurer must provide the commissioner with a valid email address. ~~((As provided in WAC 284-17-005 (1)(b), the email address will be the official contact address for all communication regarding licensing processes.))~~ The following do not need to comply with the provisions of RCW 48.17.450(3) and 48.15.103(3) (affirmative consent and require a response):

(a) Email communication sent to an applicant before the issuance of license; or

(b) Auto-generated email communication regarding license applications or license renewal processes.

(2) Each applicant, individual or business entity licensee, insurance education provider, and insurer must notify the commissioner of any change to their email address within ~~((thirty))~~ 30 days after the change.

(3) This section applies to an insurer when appointing, terminating, or renewing the appointment of a licensee.

[Statutory Authority: RCW 48.15.015 and 48.17.005. WSR 11-04-067 (Matter No. R 2010-07), § 284-17-065, filed 1/28/11, effective 2/28/11.]

## WSR 23-20-131

## PROPOSED RULES

## DEPARTMENT OF LICENSING

[Filed October 4, 2023, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-116.

Title of Rule and Other Identifying Information: WAC 308-56A-275 Certification of signature and 308-93-470 Certification of signatures.

Hearing Location(s): On November 8, 2023, at 10:00 a.m., via Zoom meeting [https://dol-wa.zoom.us/j/81285681948?](https://dol-wa.zoom.us/j/81285681948?pwd=QUFyV2l5eDh0QWZTYzBJRFRSYlZidz09)

pwd=QUFyV2l5eDh0QWZTYzBJRFRSYlZidz09, Meeting ID 812 8568 1948, Passcode 870613; One-tap mobile +12532050468,,81285681948#,,,,\*870613# US, +12532158782,,81285681948#,,,,\*870613# US (Tacoma); or dial by your location. Find your local number [https://dol-wa.zoom.us/u/kvhSWRxCP](https://dol-wa.zoom.us/j/81285681948?pwd=QUFyV2l5eDh0QWZTYzBJRFRSYlZidz09), Meeting ID 812 8568 1948, Passcode 870613. If you are having difficulty joining the Zoom meeting at the time of the public hearing, please call 360-902-0131. An in-person option is available at Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: November 9, 2023.

Submit Written Comments to: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by November 7, 2023.

Assistance for Persons with Disabilities: Contact Kelsey Stone, phone 360-902-0131, email [rulescoordinator@dol.wa.gov](mailto:rulescoordinator@dol.wa.gov), by October 29, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 308-56A-275 and 308-93-470 to clarify the certification process and eliminate outdated references to "operator numbers."

Reasons Supporting Proposal: This clean up will help to simplify compliance for customers.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority and 88.02.320 Department—Powers and duties.

Statute Being Implemented: WAC 308-56A-275 Certification of signature and 308-93-470 Certification of signatures.

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

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98501, 360-902-0131; Implementation and Enforcement: Stacy Allen, 1125 Washington Street S.E., Olympia, WA 98501, 360-902-0122.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule does not constitute a "significant legislative rule" as defined in RCW 34.05.328. The rules under amendment are procedural rules, governing the consistency of agency internal operations as they relate to vehicle licensing. Additionally, no costs are imposed by the proposed amendments; amendments merely reflect current practice.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: This rule corrects an outdated reference to a bureaucratic identifier that no longer exists. Removal of this reference does not change the effect of the rule.

Scope of exemption for rule proposal:  
Is fully exempt.

October 4, 2023  
Ellis Starrett  
Rules and Policy Manager

## OTS-4941.1

AMENDATORY SECTION (Amending WSR 03-08-055, filed 3/31/03, effective 5/1/03)

### **WAC 308-56A-275 Certification of signature. Who may certify signatures?**

(1) Signatures must be notarized by a notary public or certified by an agent or subagent appointed by the director to conduct vehicle title and registration activities on behalf of the department. The certification must include the signature (~~(and the)~~), county, and office (~~(, and operator numbers)~~) of the person certifying the signature. Signatures may also be certified by one of the following:

(a) Employees authorized by the director to certify signatures. These employees are:

- (i) Deputy director; and
  - (ii) Assistant director for vehicle services; and
  - (iii) Administrator and managers of the division primarily responsible for vehicle title and registration; and
  - (iv) Persons assigned to liaison duties between the department and its agents and subagents; and
  - (v) Persons assigned the responsibility of accepting title and registration applications at the department's offices; and
  - (vi) Persons assigned the responsibility for investigating vehicle dealer activities; and
- (b) Persons authorized by a Washington licensed vehicle dealer, if the vehicle is sold by that dealer. The certification must include the dealer number, signature, and title of the person certifying the signature.

(2) The person certifying the signatures shall require proof of identification. Approved identification includes:

- (a) Drivers license; or
- (b) Any nationally or regionally recognized government issued photo identification card; or
- (c) Any two of the following:
  - (i) A nationally or regionally recognized credit card (signed);
  - (ii) Any certificate or other document issued by a government agency for the purpose of establishing identity; or
- (d) Other documentation satisfactory to the department.

[Statutory Authority: RCW 46.01.110. WSR 03-08-055, § 308-56A-275, filed 3/31/03, effective 5/1/03; WSR 99-08-065, § 308-56A-275, filed 4/5/99, effective 5/6/99; WSR 88-20-035 (Order TL/RG 44), §

308-56A-275, filed 9/30/88; Order MV 208, § 308-56A-275, filed 7/31/74.]

## OTS-4942.1

AMENDATORY SECTION (Amending WSR 00-23-028, filed 11/7/00, effective 12/8/00)

**WAC 308-93-470 Certification of signatures.** (1) **Who may certify or notarize vessel certificate of ownership and registration activities on behalf of the department?** Signatures must be notarized by a notary public or certified by agents and subagents appointed by the director. The certification must include the signature (~~(and the)~~), county, and office(~~(, and operator number)~~) of the person certifying the signature. Signatures may also be certified by one of the following:

- (a) Employees authorized by the director to certify signatures. The employees are:
- (i) Deputy director; and
  - (ii) Assistant director for vehicle services; and
  - (iii) Administrator and managers of the division primarily responsible for vessel title and registration; and
  - (iv) Persons assigned to liaison duties between the department and its agents and subagents; and
  - (v) Persons assigned the responsibility of accepting title and registration applications at the department's offices; and
  - (vi) Persons assigned the responsibility for investigating vessel dealer activities.
- (b) Persons named on a Washington vessel dealers bond, filed with the department, if the vessel is sold by that licensed vessel dealer. The certification must include the dealer number, signature, and title, of the person certifying the signature.

(2) **What proof of identification must be presented to the person certifying the signature(s)?** The person certifying the signatures shall require proof of identification. Approved identification includes:

- (a) Drivers license; or
- (b) Any signed photo identification card; or
- (c) Any two of the following:
  - (i) A nationally or regionally recognized credit card (signed);
  - (ii) A signed ID card issued by a city, county, state or federal government agency;
  - (iii) Any certificate or other document issued by a government agency for the purpose of establishing identity; or
- (d) Other documentation satisfactory to the person certifying the signature.

[Statutory Authority: RCW 88.02.070 and 88.02.100. WSR 00-23-028, § 308-93-470, filed 11/7/00, effective 12/8/00. Statutory Authority: RCW 88.02.070. WSR 98-09-023, § 308-93-470, filed 4/8/98, effective 5/9/98. Statutory Authority: 1983 c 7 § 20 and 1983 2nd ex.s. c 3 § 46. WSR 83-23-076 (Order 736-DOL), § 308-93-470, filed 11/18/83.]