

WSR 15-08-004
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed March 20, 2015, 9:40 a.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 357-01-235 Persons with disabilities.

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on May 14, 2015, at 8:30 a.m.

Date of Intended Adoption: May 14, 2015.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by May 7, 2015. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by May 7, 2015, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing the revision to this rule in order to clarify this definition so that responding employees interpret the definition more broadly. The definition revision should expand the number of employees who self-report as meeting the definition.

Note: This definition only applies to affirmative action. The definition of disability for purposes of nondiscrimination and reasonable accommodation are addressed elsewhere.

Reasons Supporting Proposal: This is to broaden the definition and expand the number of state employees who self-report for affirmative action purposes only.

Statutory Authority for Adoption: Chapter 41.06 RCW.

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: Kristie Wilson, 128 10th Avenue S.W., Olympia, WA 98501, (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

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.

March 20, 2015
 Roselyn Marcus
 Assistant Director of
 Legal and Legislative Services

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-235 Persons with disabilities. For affirmative action purposes, ~~((a person))~~ an individual with a permanent physical, mental, or sensory impairment ~~((which))~~ that substantially limits one or more major life ~~((activity: Physical, mental, or sensory impairment means: (a) Any physiological or neurological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or functions; or (b) any mental or psychological disorders such as mental retardation, organic brain syndrome, emotional or mental illness, or any specific learning disability))~~ activities. The impairment must be both permanent and material rather than slight, ~~((and permanent in that it is seldom fully corrected by medical replacement, therapy, or surgical means))~~ but not necessarily require a workplace accommodation. An impairment that is episodic or in remission is still a disability if it would substantially limit a major life activity when active. The determination of whether an impairment substantially limits a major life activity shall be made without considering temporary improvements made through mitigating measures such as medication, therapy, reasonable accommodation, prosthetics, technology, equipment, or adaptive devices (but not to include ordinary eyeglasses or contact lenses).

WSR 15-08-008
PROPOSED RULES
TRANSPORTATION COMMISSION

[Filed March 23, 2015, 7:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-005.

Title of Rule and Other Identifying Information: Tacoma Narrows Bridge (TNB) toll rate and policy setting.

Hearing Location(s): Gig Harbor Civic Center, 3510 Grandview Street, Gig Harbor, WA, on May 20, 2015, at 6:00 p.m.

Date of Intended Adoption: May 20, 2015.

Submit Written Comments to: Reema Griffith, P.O. Box 47308, Olympia, WA 9804-7308 [98504-7308], e-mail transc@wstc.wa.gov, fax (360) 705-6802, by May 13, 2015.

Assistance for Persons with Disabilities: Contact Reema Griffith by May 13, 2013 [2015], at (360) 705-6802.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is required to establish toll rates and fees for the TNB that are adequate to cover debt, operations, insurance and maintenance costs. The purpose of the proposed rule is to amend WAC 468-270-070 establishing new toll rates on the TNB.

Reasons Supporting Proposal: State statute requires rates be sufficient to meet maintenance and operational costs, insurance costs, and make principal and interest payments on the debt. In order to meet the requirements in state law, TNB toll rates need to be adjusted.

Statutory Authority for Adoption: Chapter 47.46 RCW and RCW 47.56.165.

Statute Being Implemented: RCW 47.46.100.

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

Name of Proponent: Washington state transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Reema Griffith, Olympia, Washington, (360) 705-7070; Implementation and Enforcement: Craig Stone, Seattle, Washington, (206) 464-1220.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do

not apply to "business in an industry," as described in RCW 19.85.030 (1)(a), but rather the rules apply to vehicles using the TNB.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328(5), RCW 34.05.328 does not apply to the transportation commission and it is not required to develop a cost-benefit analysis.

March 23, 2015
 Reema Griffith
 Executive Director

AMENDATORY SECTION (Amending WSR 13-12-006, filed 5/23/13, effective 7/1/13)

WAC 468-270-070 What are the toll rates on the Tacoma Narrows Bridge? ((Subject to the legislature's redelegation of authority,)) The toll ((charges)) rates for the Tacoma Narrows Bridge are shown in Tables 1 and 2.

**Table 1, Effective July 1, ((2013)) 2015
 Tacoma Narrows Bridge Toll Rates**

Vehicle Axles	Good to Go! TM Pass ¹	Cash ¹	Pay By Mail ¹	Pay by Plate ²	Short Term Account ³
((2	\$4.25	\$5.25	\$6.25	\$4.50	\$5.75
3	\$6.40	\$7.90	\$9.40	\$6.65	\$8.90
4	\$8.50	\$10.50	\$12.50	\$8.75	\$12.00
5	\$10.65	\$13.15	\$15.65	\$10.90	\$15.15
6	\$12.75	\$15.75	\$18.75	\$13.00	\$18.25))
<u>2</u>	<u>\$5.00</u>	<u>\$6.00</u>	<u>\$7.00</u>	<u>\$5.25</u>	<u>\$6.50</u>
<u>3</u>	<u>\$7.50</u>	<u>\$9.00</u>	<u>\$10.50</u>	<u>\$7.75</u>	<u>\$10.00</u>
<u>4</u>	<u>\$10.00</u>	<u>\$12.00</u>	<u>\$14.00</u>	<u>\$10.25</u>	<u>\$13.50</u>
<u>5</u>	<u>\$12.50</u>	<u>\$15.00</u>	<u>\$17.50</u>	<u>\$12.75</u>	<u>\$17.00</u>
<u>6</u>	<u>\$15.00</u>	<u>\$18.00</u>	<u>\$21.00</u>	<u>\$15.25</u>	<u>\$20.50</u>

Notes: ¹The rate has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

**Table 2, Effective July 1, ((2014)) 2016
 Tacoma Narrows Bridge Toll Rates**

Vehicle Axles	Good to Go! TM Pass ¹	Cash ¹	Pay By Mail ¹	Pay by Plate ²	Short Term Account ³
((2	\$4.50	\$5.50	\$6.50	\$4.75	\$6.00
3	\$6.75	\$8.25	\$9.75	\$7.00	\$9.25
4	\$9.00	\$11.00	\$13.00	\$9.25	\$12.50
5	\$11.25	\$13.75	\$16.25	\$11.50	\$15.75
6	\$13.50	\$16.50	\$19.50	\$13.75	\$19.00))
<u>2</u>	<u>\$5.50</u>	<u>\$6.50</u>	<u>\$7.50</u>	<u>\$5.75</u>	<u>\$7.00</u>
<u>3</u>	<u>\$8.25</u>	<u>\$9.75</u>	<u>\$11.25</u>	<u>\$8.50</u>	<u>\$10.75</u>
<u>4</u>	<u>\$11.00</u>	<u>\$13.00</u>	<u>\$15.00</u>	<u>\$11.25</u>	<u>\$14.50</u>
<u>5</u>	<u>\$13.75</u>	<u>\$16.25</u>	<u>\$18.75</u>	<u>\$14.00</u>	<u>\$18.25</u>
<u>6</u>	<u>\$16.50</u>	<u>\$19.50</u>	<u>\$22.50</u>	<u>\$16.75</u>	<u>\$22.00</u>

Notes: ¹The rate has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

WSR 15-08-013
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed March 24, 2015, 10:53 a.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 363-116-300 Pilotage rates for the Puget Sound pilotage district.

Hearing Location(s): 2901 Third Avenue, 4th Floor, Rainier Conference Room, Seattle, WA 98121, on May 14, 2015, at 9:30 a.m.

Date of Intended Adoption: May 14, 2015.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by May 7, 2015.

Assistance for Persons with Disabilities: Contact Shawna Erickson by May 11, 2015, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule reflects a range of across-the-board tariff adjustments between a decrease of twelve percent and an increase of twelve percent excluding the *Training Surcharge* Category and the *Transportation to Vessels on Puget Sound* Category. It is intended that the board have the ability to consider the options set out below to achieve the equivalency of any across-the-board tariff adjustment that the board deems appropriate within this range.

The following tariff elements include potential changes in tonnage charges on certain assignments and possible adjustments to the lower and upper tiers of tonnage charges. It is intended that the following potential adjustments be considered with any mix of tariff elements (a) through (e) providing options to achieve the decision on element number (1):

(1) An across-the-board change in all tariff charges excluding the *Training Surcharge* Category and the *Transportation to Vessels on Puget Sound* Category in the range of -12 percent to +12 percent; implemented as an across-the-board change or by any combination of the following elements:

(a) A minimum tonnage charge of \$0 to \$1,800 applicable to Zone I assignments not including Zone I assignments involving a second pilot;

(b) A minimum tonnage charge of \$0 to \$1,800 for Zone II and above assignments for vessels with less than 15,000 horsepower given the longer pilotage times involved;

(c) A change in the bottom tier of *Tonnage Charges 0 to 20,000 gross tons* to increase the maximum for this tier from the current \$168 to achieve all or part of the board's general rate increase or decrease, shown as -12 percent to +50 percent;

(d) A change in the top tier of *Tonnage Charges 50,000 gross tons and up* to potentially offset increases in other categories; and

(e) Other adjustments in the tariff structure that could be made in addition, or as an alternative, to across-the-board

charges, which are jointly raised by the parties in submissions subsequent to this filing.

Proposed new language inserted under the "*Tonnage Charges*" Category:

Notwithstanding the above tonnage charges, there shall be a minimum tonnage charge of \$0 to \$1,800 applied to:

(1) All LOA Zone I assignments other than assignments of an additional pilot(s) on ship movements involving more than one pilot jointly piloting the vessel; and

(2) All LOA Zone II and greater assignments for vessels rated at less than 15,000 horsepower or under tug escort.

Reasons Supporting Proposal: Stakeholders Pacific Merchant Shipping Association, Puget Sound pilots and the ports of Tacoma and Seattle are in support of this group of changes and have jointly presented it to the board for consideration.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: RCW 88.16.035.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Puget Sound pilotage district expire on June 30, 2015. New rates must be set annually.

The intent is to set a Puget Sound pilotage district tariff for the period July 1, 2015, through June 30, 2016.

Name of Proponent: Puget Sound pilots, Pacific Merchant Shipping Association and the ports of Seattle and Tacoma, private.

Name of Agency Personnel Responsible for Drafting: Peggy Larson, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual review of the rates charged for pilotage services.

The application of the proposed revisions is clear in the description of the proposal and its anticipated effects as well as the proposed tariff shown below.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

March 24, 2015

Peggy Larson

Executive Director

AMENDATORY SECTION (Amending WSR 14-24-014, filed 11/20/14, effective 1/1/15)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours ((~~January~~)) July 1, 2015, through 2400 hours June 30, ((~~2015~~)) 2016.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
Pilot boat fee:	\$(348.00) <u>306.00 to \$390.00</u>
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	
Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.	
Compass Adjustment	\$(359.00) <u>316.00 to \$402.00</u>
Radio Direction Finder Calibration	\$(359.00) <u>316.00 to \$402.00</u>
Launching Vessels	\$(540.00) <u>475.00 to \$605.00</u>
Trial Trips, 6 hours or less (minimum \$(1,014.00))	\$(169.00) <u>149.00 to \$189.00</u> per hour
Trial Trips, over 6 hours (two pilots)	\$(338.00) <u>297.00 to \$379.00</u> per hour
Shilshole Bay - Salmon Bay	\$(211.00) <u>186.00 to \$236.00</u>
Salmon Bay - Lake Union	\$(164.00) <u>144.00 to \$184.00</u>
Lake Union - Lake Washington (plus LOA zone from Webster Point)	\$(211.00) <u>186.00 to \$236.00</u>
Cancellation Charge	LOA Zone I
Cancellation Charge - Port Angeles:	LOA Zone II
(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)	

Waterway and Bridge Charges:

Ships up to 90' beam:

A charge of ~~\$(266.00)~~ 234.00 to \$298.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of ~~\$(127.00)~~ 112.00 to \$142.00 per bridge.

Ships 90' beam and/or over:

A charge of ~~\$(361.00)~~ 318.00 to \$404.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of ~~\$(251.00)~~ 221.00 to \$281.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:

Applicable harbor shift rate to apply, plus ~~\$(274.00)~~ 241.00 to \$307.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is ~~\$(274.00)~~ 241.00 to \$307.00 for every hour or fraction thereof.

Sailing Delay:

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is ~~\$(274.00)~~ 241.00 to \$307.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of ~~\$(274.00)~~ 241.00 to

\$307.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival - Port Angeles:

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of ~~\$(274.00)~~ 241.00 to \$307.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of ~~\$(0.0084)~~ 0.0074 to \$0.0126 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of ~~\$(0.0814)~~ 0.0716 to 0.0912 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be ~~\$(0.0974)~~ 0.0857 to \$0.1091 per gross ton.

Notwithstanding the above tonnage charges, there shall be a minimum tonnage charge of \$0.00 to \$1,800.00 applied to:

(1) All LOA Zone I assignments other than assignments of an additional pilot(s) on ship movements involving more than one pilot jointly piloting the vessel; and

(2) All LOA Zone II and greater assignments for vessels rated at less than 15,000 horsepower or under tug escort.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

March Point or Anacortes	\$195.00
Bangor	190.00
Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00

Direct Transit Charge

Sailing Delay Charge. Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.

Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

Delinquent Payment Charge:

1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:

In the event that a pilot consents to board or deboard a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

~~\$(2,107.00)~~ 1,854.00 to \$2,360.00

~~\$(283.00)~~ 249.00 to \$317.00 per hour

Slow Down Charge. Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities. ~~\$(283.00)~~ 249.00 to \$317.00 per hour

Cancellation Charge. Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses. ~~\$(525.00)~~ 462.00 to \$588.00

Transportation Charge Vancouver Area. Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia. ~~\$(514.00)~~ 452.00 to \$576.00

Transportation Charge Outports. Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range. ~~\$(649.00)~~ 571.00 to \$727.00

Training Surcharge:

On January 1, 2011, a surcharge of \$15.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

LOA Rate Schedule:

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

(LOA (Length Overall))	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
UP to 449	263	381	650	968	1,304	1,692
450-459	274	388	653	983	1,325	1,700
460-469	276	392	665	999	1,343	1,708
470-479	285	404	672	1,020	1,347	1,711
480-489	294	410	675	1,038	1,355	1,719
490-499	298	416	685	1,057	1,371	1,728
500-509	313	423	695	1,068	1,383	1,738
510-519	315	431	702	1,085	1,398	1,744
520-529	319	447	712	1,090	1,410	1,758
530-539	329	452	721	1,102	1,432	1,778
540-549	334	458	738	1,114	1,454	1,795
550-559	341	474	742	1,130	1,466	1,812
560-569	353	493	757	1,141	1,479	1,828
570-579	361	496	760	1,146	1,495	1,841
580-589	376	505	778	1,154	1,503	1,859
590-599	393	516	782	1,160	1,526	1,882
600-609	408	532	794	1,164	1,544	1,890
610-619	431	537	807	1,169	1,559	1,907
620-629	447	543	814	1,183	1,577	1,929
630-639	468	552	824	1,186	1,591	1,946
640-649	486	566	832	1,188	1,604	1,960
650-659	520	575	847	1,197	1,624	1,981
660-669	530	582	854	1,205	1,642	1,996
670-679	550	597	863	1,226	1,660	2,009
680-689	557	607	874	1,237	1,674	2,028

(LOA (Length Overall))	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
690-699	574	616	888	1,258	1,692	2,071
700-719	599	637	904	1,275	1,725	2,093
720-739	634	653	927	1,292	1,758	2,128
740-759	659	685	945	1,304	1,795	2,167
760-779	685	707	968	1,325	1,828	2,194
780-799	719	738	983	1,343	1,859	2,234
800-819	748	760	1,002	1,350	1,890	2,268
820-839	771	788	1,025	1,371	1,929	2,293
840-859	804	820	1,046	1,387	1,958	2,333
860-879	834	847	1,064	1,423	1,996	2,367
880-899	863	871	1,085	1,455	2,028	2,402
900-919	889	900	1,103	1,494	2,071	2,434
920-939	917	927	1,130	1,526	2,091	2,468
940-959	950	952	1,147	1,559	2,128	2,498
960-979	971	980	1,167	1,591	2,167	2,535
980-999	1,003	1,002	1,187	1,624	2,194	2,568
1000-1019	1,065	1,067	1,240	1,710	2,299	2,678
1020-1039	1,094	1,098	1,279	1,758	2,368	2,757
1040-1059	1,127	1,125	1,316	1,812	2,435	2,838
1060-1079	1,161	1,165	1,355	1,866	2,511	2,922
1080-1099	1,196	1,197	1,394	1,920	2,585	3,011
1100-1119	1,230	1,234	1,437	1,980	2,662	3,102
1120-1139	1,268	1,274	1,481	2,037	2,742	3,194
1140-1159	1,304	1,310	1,523	2,098	2,825	3,291
1160-1179	1,343	1,347	1,571	2,161	2,909	3,388
1180-1199	1,384	1,388	1,616	2,226	2,997	3,491
1200-1219	1,427	1,430	1,664	2,293	3,087	3,593
1220-1239	1,467	1,473	1,713	2,362	3,177	3,701
1240-1259	1,511	1,516	1,763	2,432	3,274	3,811
1260-1279	1,555	1,561	1,817	2,505	3,373	3,925
1280-1299	1,602	1,609	1,872	2,580	3,471	4,044
1300-1319	1,651	1,655	1,927	2,657	3,576	4,164
1320-1339	1,701	1,705	1,986	2,736	3,682	4,290
1340-1359	1,749	1,756	2,045	2,817	3,792	4,419
1360-1379	1,803	1,807	2,106	2,903	3,905	4,549
1380-1399	1,855	1,861	2,171	2,989	4,022	4,687
1400-1419	1,912	1,918	2,233	3,077	4,142	4,826
1420-1439	1,968	1,976	2,301	3,171	4,268	4,971
1440-1459	2,029	2,035	2,371	3,265	4,395	5,120
1460-1479	2,086	2,094	2,440	3,362	4,527	5,270

<u>LOA</u> (Length Overall)	<u>ZONE I</u> Intra Harbor		<u>ZONE II</u> 0-30 Miles		<u>ZONE III</u> 31-50 Miles		<u>ZONE IV</u> 51-75 Miles		<u>ZONE V</u> 76-100 Miles		<u>ZONE VI</u> 101 Miles & Over	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
<u>1480 - 1499</u>	2,150	2,150	2,157	2,157	2,512	2,512	3,462	3,462	4,661	4,661	5,429	5,429
<u>1500 - Over</u>	2,215	2,215	2,222	2,222	2,587	2,587	3,568	3,568	4,800	4,800	5,594	5,594
<u>UP to 449</u>	231	295	335	427	572	728	852	1,084	1,148	1,460	1,489	1,895
<u>450 - 459</u>	241	307	341	435	575	731	865	1,101	1,166	1,484	1,496	1,904
<u>460 - 469</u>	243	309	345	439	585	745	879	1,119	1,182	1,504	1,503	1,913
<u>470 - 479</u>	251	319	356	452	591	753	898	1,142	1,185	1,509	1,506	1,916
<u>480 - 489</u>	259	329	361	459	594	756	913	1,163	1,192	1,518	1,513	1,925
<u>490 - 499</u>	262	334	366	466	603	767	930	1,184	1,206	1,536	1,521	1,935
<u>500 - 509</u>	275	351	372	474	612	778	940	1,196	1,217	1,549	1,529	1,947
<u>510 - 519</u>	277	353	379	483	618	786	955	1,215	1,230	1,566	1,535	1,953
<u>520 - 529</u>	281	357	393	501	627	797	959	1,221	1,241	1,579	1,547	1,969
<u>530 - 539</u>	290	368	398	506	634	808	970	1,234	1,260	1,604	1,565	1,991
<u>540 - 549</u>	294	374	403	513	649	827	980	1,248	1,280	1,628	1,580	2,010
<u>550 - 559</u>	300	382	417	531	653	831	994	1,266	1,290	1,642	1,595	2,029
<u>560 - 569</u>	311	395	434	552	666	848	1,004	1,278	1,302	1,656	1,609	2,047
<u>570 - 579</u>	318	404	436	556	669	851	1,008	1,284	1,316	1,674	1,620	2,062
<u>580 - 589</u>	331	421	444	566	685	871	1,016	1,292	1,323	1,683	1,636	2,082
<u>590 - 599</u>	346	440	454	578	688	876	1,021	1,299	1,343	1,709	1,656	2,108
<u>600 - 609</u>	359	457	468	596	699	889	1,024	1,304	1,359	1,729	1,663	2,117
<u>610 - 619</u>	379	483	473	601	710	904	1,029	1,309	1,372	1,746	1,678	2,136
<u>620 - 629</u>	393	501	478	608	716	912	1,041	1,325	1,388	1,766	1,698	2,160
<u>630 - 639</u>	412	524	486	618	725	923	1,044	1,328	1,400	1,782	1,712	2,180
<u>640 - 649</u>	428	544	498	634	732	932	1,045	1,331	1,412	1,796	1,725	2,195
<u>650 - 659</u>	458	582	506	644	745	949	1,053	1,341	1,429	1,819	1,743	2,219
<u>660 - 669</u>	466	594	512	652	752	956	1,060	1,350	1,445	1,839	1,756	2,236
<u>670 - 679</u>	484	616	525	669	759	967	1,079	1,373	1,461	1,859	1,768	2,250
<u>680 - 689</u>	490	624	534	680	769	979	1,089	1,385	1,473	1,875	1,785	2,271
<u>690 - 699</u>	505	643	542	690	781	995	1,107	1,409	1,489	1,895	1,822	2,320
<u>700 - 719</u>	527	671	561	713	796	1,012	1,122	1,428	1,518	1,932	1,842	2,344
<u>720 - 739</u>	558	710	575	731	816	1,038	1,137	1,447	1,547	1,969	1,873	2,383
<u>740 - 759</u>	580	738	603	767	832	1,058	1,148	1,460	1,580	2,010	1,907	2,427
<u>760 - 779</u>	603	767	622	792	852	1,084	1,166	1,484	1,609	2,047	1,931	2,457
<u>780 - 799</u>	633	805	649	827	865	1,101	1,182	1,504	1,636	2,082	1,966	2,502
<u>800 - 819</u>	658	838	669	851	882	1,122	1,188	1,512	1,663	2,117	1,996	2,540
<u>820 - 839</u>	678	864	693	883	902	1,148	1,206	1,536	1,698	2,160	2,018	2,568

<u>LOA</u> (Length Overall)	<u>ZONE</u> I		<u>ZONE</u> II		<u>ZONE</u> III		<u>ZONE</u> IV		<u>ZONE</u> V		<u>ZONE</u> VI	
	Intra Harbor		0-30 Miles		31-50 Miles		51-75 Miles		76-100 Miles		101 Miles & Over	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
<u>840 - 859</u>	<u>708</u>	<u>900</u>	<u>722</u>	<u>918</u>	<u>920</u>	<u>1,172</u>	<u>1,221</u>	<u>1,553</u>	<u>1,723</u>	<u>2,193</u>	<u>2,053</u>	<u>2,613</u>
<u>860 - 879</u>	<u>734</u>	<u>934</u>	<u>745</u>	<u>949</u>	<u>936</u>	<u>1,192</u>	<u>1,252</u>	<u>1,594</u>	<u>1,756</u>	<u>2,236</u>	<u>2,083</u>	<u>2,651</u>
<u>880 - 899</u>	<u>759</u>	<u>967</u>	<u>766</u>	<u>976</u>	<u>955</u>	<u>1,215</u>	<u>1,280</u>	<u>1,630</u>	<u>1,785</u>	<u>2,271</u>	<u>2,114</u>	<u>2,690</u>
<u>900 - 919</u>	<u>782</u>	<u>996</u>	<u>792</u>	<u>1,008</u>	<u>971</u>	<u>1,235</u>	<u>1,315</u>	<u>1,673</u>	<u>1,822</u>	<u>2,320</u>	<u>2,142</u>	<u>2,726</u>
<u>920 - 939</u>	<u>807</u>	<u>1,027</u>	<u>816</u>	<u>1,038</u>	<u>994</u>	<u>1,266</u>	<u>1,343</u>	<u>1,709</u>	<u>1,840</u>	<u>2,342</u>	<u>2,172</u>	<u>2,764</u>
<u>940 - 959</u>	<u>836</u>	<u>1,064</u>	<u>838</u>	<u>1,066</u>	<u>1,009</u>	<u>1,285</u>	<u>1,372</u>	<u>1,746</u>	<u>1,873</u>	<u>2,383</u>	<u>2,198</u>	<u>2,798</u>
<u>960 - 979</u>	<u>854</u>	<u>1,088</u>	<u>862</u>	<u>1,098</u>	<u>1,027</u>	<u>1,307</u>	<u>1,400</u>	<u>1,782</u>	<u>1,907</u>	<u>2,427</u>	<u>2,231</u>	<u>2,839</u>
<u>980 - 999</u>	<u>883</u>	<u>1,123</u>	<u>882</u>	<u>1,122</u>	<u>1,045</u>	<u>1,329</u>	<u>1,429</u>	<u>1,819</u>	<u>1,931</u>	<u>2,457</u>	<u>2,260</u>	<u>2,876</u>
<u>1000 - 1019</u>	<u>937</u>	<u>1,193</u>	<u>939</u>	<u>1,195</u>	<u>1,091</u>	<u>1,389</u>	<u>1,505</u>	<u>1,915</u>	<u>2,023</u>	<u>2,575</u>	<u>2,357</u>	<u>2,999</u>
<u>1020 - 1039</u>	<u>963</u>	<u>1,225</u>	<u>966</u>	<u>1,230</u>	<u>1,126</u>	<u>1,432</u>	<u>1,547</u>	<u>1,969</u>	<u>2,084</u>	<u>2,652</u>	<u>2,426</u>	<u>3,088</u>
<u>1040 - 1059</u>	<u>992</u>	<u>1,262</u>	<u>990</u>	<u>1,260</u>	<u>1,158</u>	<u>1,474</u>	<u>1,595</u>	<u>2,029</u>	<u>2,143</u>	<u>2,727</u>	<u>2,497</u>	<u>3,179</u>
<u>1060 - 1079</u>	<u>1,022</u>	<u>1,300</u>	<u>1,025</u>	<u>1,305</u>	<u>1,192</u>	<u>1,518</u>	<u>1,642</u>	<u>2,090</u>	<u>2,210</u>	<u>2,812</u>	<u>2,571</u>	<u>3,273</u>
<u>1080 - 1099</u>	<u>1,052</u>	<u>1,340</u>	<u>1,053</u>	<u>1,341</u>	<u>1,227</u>	<u>1,561</u>	<u>1,690</u>	<u>2,150</u>	<u>2,275</u>	<u>2,895</u>	<u>2,650</u>	<u>3,372</u>
<u>1100 - 1119</u>	<u>1,082</u>	<u>1,378</u>	<u>1,086</u>	<u>1,382</u>	<u>1,265</u>	<u>1,609</u>	<u>1,742</u>	<u>2,218</u>	<u>2,343</u>	<u>2,981</u>	<u>2,730</u>	<u>3,474</u>
<u>1120 - 1139</u>	<u>1,116</u>	<u>1,420</u>	<u>1,121</u>	<u>1,427</u>	<u>1,303</u>	<u>1,659</u>	<u>1,793</u>	<u>2,281</u>	<u>2,413</u>	<u>3,071</u>	<u>2,811</u>	<u>3,577</u>
<u>1140 - 1159</u>	<u>1,148</u>	<u>1,460</u>	<u>1,153</u>	<u>1,467</u>	<u>1,340</u>	<u>1,706</u>	<u>1,846</u>	<u>2,350</u>	<u>2,486</u>	<u>3,164</u>	<u>2,896</u>	<u>3,686</u>
<u>1160 - 1179</u>	<u>1,182</u>	<u>1,504</u>	<u>1,185</u>	<u>1,509</u>	<u>1,382</u>	<u>1,760</u>	<u>1,902</u>	<u>2,420</u>	<u>2,560</u>	<u>3,258</u>	<u>2,981</u>	<u>3,795</u>
<u>1180 - 1199</u>	<u>1,218</u>	<u>1,550</u>	<u>1,221</u>	<u>1,555</u>	<u>1,422</u>	<u>1,810</u>	<u>1,959</u>	<u>2,493</u>	<u>2,637</u>	<u>3,357</u>	<u>3,072</u>	<u>3,910</u>
<u>1200 - 1219</u>	<u>1,256</u>	<u>1,598</u>	<u>1,258</u>	<u>1,602</u>	<u>1,464</u>	<u>1,864</u>	<u>2,018</u>	<u>2,568</u>	<u>2,717</u>	<u>3,457</u>	<u>3,162</u>	<u>4,024</u>
<u>1220 - 1239</u>	<u>1,291</u>	<u>1,643</u>	<u>1,296</u>	<u>1,650</u>	<u>1,507</u>	<u>1,919</u>	<u>2,079</u>	<u>2,645</u>	<u>2,796</u>	<u>3,558</u>	<u>3,257</u>	<u>4,145</u>
<u>1240 - 1259</u>	<u>1,330</u>	<u>1,692</u>	<u>1,334</u>	<u>1,698</u>	<u>1,551</u>	<u>1,975</u>	<u>2,140</u>	<u>2,724</u>	<u>2,881</u>	<u>3,667</u>	<u>3,354</u>	<u>4,268</u>
<u>1260 - 1279</u>	<u>1,368</u>	<u>1,742</u>	<u>1,374</u>	<u>1,748</u>	<u>1,599</u>	<u>2,035</u>	<u>2,204</u>	<u>2,806</u>	<u>2,968</u>	<u>3,778</u>	<u>3,454</u>	<u>4,396</u>
<u>1280 - 1299</u>	<u>1,410</u>	<u>1,794</u>	<u>1,416</u>	<u>1,802</u>	<u>1,647</u>	<u>2,097</u>	<u>2,270</u>	<u>2,890</u>	<u>3,054</u>	<u>3,888</u>	<u>3,559</u>	<u>4,529</u>
<u>1300 - 1319</u>	<u>1,453</u>	<u>1,849</u>	<u>1,456</u>	<u>1,854</u>	<u>1,696</u>	<u>2,158</u>	<u>2,338</u>	<u>2,976</u>	<u>3,147</u>	<u>4,005</u>	<u>3,664</u>	<u>4,664</u>
<u>1320 - 1339</u>	<u>1,497</u>	<u>1,905</u>	<u>1,500</u>	<u>1,910</u>	<u>1,748</u>	<u>2,224</u>	<u>2,408</u>	<u>3,064</u>	<u>3,240</u>	<u>4,124</u>	<u>3,775</u>	<u>4,805</u>
<u>1340 - 1359</u>	<u>1,539</u>	<u>1,959</u>	<u>1,545</u>	<u>1,967</u>	<u>1,800</u>	<u>2,290</u>	<u>2,479</u>	<u>3,155</u>	<u>3,337</u>	<u>4,247</u>	<u>3,889</u>	<u>4,949</u>
<u>1360 - 1379</u>	<u>1,587</u>	<u>2,019</u>	<u>1,590</u>	<u>2,024</u>	<u>1,853</u>	<u>2,359</u>	<u>2,555</u>	<u>3,251</u>	<u>3,436</u>	<u>4,374</u>	<u>4,003</u>	<u>5,095</u>
<u>1380 - 1399</u>	<u>1,632</u>	<u>2,078</u>	<u>1,638</u>	<u>2,084</u>	<u>1,910</u>	<u>2,432</u>	<u>2,630</u>	<u>3,348</u>	<u>3,539</u>	<u>4,505</u>	<u>4,125</u>	<u>5,249</u>
<u>1400 - 1419</u>	<u>1,683</u>	<u>2,141</u>	<u>1,688</u>	<u>2,148</u>	<u>1,965</u>	<u>2,501</u>	<u>2,708</u>	<u>3,446</u>	<u>3,645</u>	<u>4,639</u>	<u>4,247</u>	<u>5,405</u>
<u>1420 - 1439</u>	<u>1,732</u>	<u>2,204</u>	<u>1,739</u>	<u>2,213</u>	<u>2,025</u>	<u>2,577</u>	<u>2,790</u>	<u>3,552</u>	<u>3,756</u>	<u>4,780</u>	<u>4,374</u>	<u>5,568</u>
<u>1440 - 1459</u>	<u>1,786</u>	<u>2,272</u>	<u>1,791</u>	<u>2,279</u>	<u>2,086</u>	<u>2,656</u>	<u>2,873</u>	<u>3,657</u>	<u>3,868</u>	<u>4,922</u>	<u>4,506</u>	<u>5,734</u>
<u>1460 - 1479</u>	<u>1,836</u>	<u>2,336</u>	<u>1,843</u>	<u>2,345</u>	<u>2,147</u>	<u>2,733</u>	<u>2,959</u>	<u>3,765</u>	<u>3,984</u>	<u>5,070</u>	<u>4,638</u>	<u>5,902</u>
<u>1480 - 1499</u>	<u>1,892</u>	<u>2,408</u>	<u>1,898</u>	<u>2,416</u>	<u>2,211</u>	<u>2,813</u>	<u>3,047</u>	<u>3,877</u>	<u>4,102</u>	<u>5,220</u>	<u>4,778</u>	<u>6,080</u>
<u>1500 & Over</u>	<u>1,949</u>	<u>2,481</u>	<u>1,955</u>	<u>2,489</u>	<u>2,277</u>	<u>2,897</u>	<u>3,140</u>	<u>3,996</u>	<u>4,224</u>	<u>5,376</u>	<u>4,920</u>	<u>6,262</u>

WSR 15-08-021
WITHDRAWAL OF PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 24, 2015, 3:52 p.m.]

Please withdraw proposed rule CR-102 WSR 15-03-010 filed on January 8, 2015. The proposal as filed was removed from public hearing by the board.

David Brenna
Senior Policy Analyst

WSR 15-08-026
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed March 25, 2015, 7:27 a.m.]

Supplemental Notice to WSR 14-20-069.

Preproposal statement of inquiry was filed as WSR 13-21-056.

Title of Rule and Other Identifying Information: WAC 246-815-020 Dental hygiene examination eligibility and 246-815-140 Continuing education for dental hygienist, the department of health is proposing to amend WAC 246-815-020 to streamline the application requirements for dental hygiene examination eligibility, and proposes to amend the continuing education (CE) requirements for dental hygienists in WAC 246-815-140. This is a supplemental notice to the proposed rule language filed under WSR 14-20-069.

Hearing Location(s): Department of Health, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501, on May 22, 2015, at 10:00 a.m.

Date of Intended Adoption: May 29, 2015.

Submit Written Comments to: Vicki Brown, Program Manager, Health Professions and Facilities, Dental Hygiene Program, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by May 22, 2015.

Assistance for Persons with Disabilities: Contact Vicki Brown by May 8, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal eliminates the requirement in WAC 246-815-020 for an applicant for licensure as a dental hygienist to submit a photo taken within the year before he or she submits the application. This proposal also reformats and streamlines the rule for clarity and restates the verification of the examinations require[d] in WAC 246-815-050. The department proposed changes to WAC 246-815-140 CE. Based on stakeholder input, the department proposes to remove the limitations on the number of hours that can be obtained in distance learning and in seminars having a featured speaker(s).

Reasons Supporting Proposal: The proposed changes in this supplemental notice to WSR 14-20-069 amends WAC 246-815-020 to reduce barriers and clarify the application requirements by reformatting and rewording. It also amends WAC 246-815-140 to provide for more flexibility when obtaining CE. The proposed language is as a result of the December 17, 2014, rule workshop with stakeholders.

Statutory Authority for Adoption: RCW 43.70.280 and 18.29.130(7).

Statute Being Implemented: Chapter 18.29 RCW.

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: Vicki Brown, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4865.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.--328. A preliminary cost-benefit analysis may be obtained by contacting Vicki Brown, Program Manager, Health Profession/Facilities, Dental Hygiene Program, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4865, fax (360) 236-2901, e-mail vicki.brown@doh.wa.gov.

March 25, 2015
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 04-20-049, filed 10/1/04, effective 11/1/04)

WAC 246-815-020 Dental hygiene (~~examination~~) licensure—Initial eligibility and application requirements. ~~((1) To be eligible to take the approved dental hygiene examination, the applicant must meet the following requirements:~~

~~(a) The applicant must have successfully completed a dental hygiene education program approved by the secretary of the department of health pursuant to WAC 246-815-030.~~

~~(b) Applicants must complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~(c) The applicant must demonstrate knowledge of Washington law pertaining to the practice of dental hygiene including the administration of legend drugs.~~

~~(d) The applicant must complete the required application materials and pay the required fee.~~

~~(2) The application must include:~~

~~(a) The required examination fee.~~

~~(b) Either the national board IBM card reflecting a passing score or a notarized copy of the national board certificate.~~

~~(c) One photograph of the applicant taken within one year preceding the application.~~

~~(3) An official transcript or certificate of completion constitutes proof of successful completion from an approved dental hygiene education program. No other proof of successful completion is acceptable.)~~ (1) An applicant for a dental hygiene license shall submit to the department the following:

(a) An initial application on forms provided by the department;

(b) The fee required under WAC 246-815-990;

(c) Proof of successful completion of the Washington state dental hygiene drug and law exam;

(d) Proof of completion of seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8.

(2) An applicant for a dental hygiene license shall also:

(a) Have official transcripts verifying successful completion of a dental hygiene education program approved by the secretary under WAC 246-815-030 sent directly from the dental hygiene program to the department. No other proof of successful completion is acceptable;

(b) Have verification of passing the National Board Dental Hygiene written examination. Results must be sent directly to the department from the American Dental Association Department of Testing Services.

(3) Have verification of passing the examinations as required in WAC 246-815-050. Results must be sent directly to the department from the testing agency.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-815-140 Continuing education for dental hygienists. (1) ((Purposes. The secretary of the department of health in consultation with the dental hygiene examining committee has determined that the public health, safety and welfare will be served by requiring all holders of dental hygiene licenses granted under chapter 18.29 RCW to continue their education after receiving such licenses.

(2) Requirements. Licensed dental hygienists must complete 15 clock hours of continuing education as required in chapter 246-12 WAC, Part 7. A current CPR card must be maintained as part of this requirement.

(3) Acceptable continuing education. Continuing education must be dental related education for professional development as a dental hygienist. The 15 clock hours shall be obtained through continuing education courses, correspondence courses, college credit courses, dental hygiene examination standardization/calibration workshops and dental hygiene examination item writer workshops.)) To renew a license a dental hygienist must:

(a) Complete fifteen clock hours of continuing education each year following the first license renewal.

(b) Maintain a current basic life support (BLS) card for health care providers.

(c) Sign a declaration attesting to the completion of the required number of hours as part of the annual renewal requirement.

(2) Acceptable continuing education - Qualification of courses for continuing education credit. The department will not authorize or approve specific continuing education courses. Continuing education course work must contribute to the professional knowledge and development of the dental hygienist or enhance services provided to patients.

For the purposes of this chapter, acceptable continuing education means courses offered or authorized by industry recognized local, state, private, national and international organizations, agencies or institutions of higher learning. Examples of sponsors or types of continuing education courses may include, but are not limited to:

(a) The Washington State Dental Association, American Dental Association, National Dental Association, Washington State Dental Hygienists' Association, American Dental

Hygienists' Association, National Dental Hygienists' Association, including the constituent and component/branch societies.

(b) Basic life support (BLS), advanced cardiac life support (ACLS), Occupational Safety and Health Administration (OSHA)/Washington Industrial Safety and Health Act (WISHA), or emergency related training such as courses offered or authorized by the American Heart Association or the American Cancer Society; or any other organizations or agencies.

(c) Self-study through study clubs, books, research materials, or other publications. The required documentation for this activity is a summary of what was learned, not to exceed five hours per year.

(d) Distance learning. Distance learning includes, but is not limited to: Correspondence course, webinar, audio/video broadcasting, audio/video teleconferencing, computer aided instruction, e-learning/online-learning, or computer broadcasting/webcasting that includes an assessment tool upon completion.

(e) A licensee who serves as an educator or who lectures in continuing education programs or courses, that contribute to the professional knowledge of a licensed dental hygienist may accumulate hours for the content preparation of the program or course, not to exceed ten hours per year.

(f) Attendance at a continuing education program with a featured speaker(s).

(g) Courses relating to practice organization and management, medical/dental insurance courses, or retirement, not to exceed five hours per year.

(h) Dental hygiene examination standardization/calibration workshops and dental hygiene examination item writer workshops, not to exceed ten hours per year.

(i) Provision of clinical dental hygiene services in a documented volunteer capacity when preceded by educational/instructional training prior to provision of services, not to exceed five hours per year. Volunteering must be without compensation and under appropriate supervision.

(j) A licensee who serves as a public health official or employee, contractor for a state or local health agency, community prevention education expert, or works in a field that relates to prevention activities in public health dentistry, may accumulate hours for the content preparation of providing services, education, or training to the underserved, rural, and at risk populations, not to exceed five hours per year.

(k) College courses.

(3) The department may randomly audit up to twenty-five percent of practitioners for compliance with the requirements in this section after the credential is renewed as allowed by chapter 246-12 WAC, Part 7.

WSR 15-08-034

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed March 25, 2015, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-186.

Title of Rule and Other Identifying Information: WAC 314-07-010 Definitions, 314-07-015 General information about liquor licenses, 314-07-020 Liquor license qualifications and application process, 314-07-035 What persons or entities have to qualify for a liquor license?, 314-07-040 What criminal history might prevent a liquor licensee from receiving or keeping a liquor license?, 314-07-045 What liquor law or rule violation history might prevent an applicant from receiving a liquor license?, 314-07-055 Temporary retail license, 314-07-060 Reasons for denial or cancellation of a temporary license, 314-07-065 Reasons the board may deny a liquor license application, 314-07-070 Process if the board denies a liquor license application, 314-07-090 Change of business name, 314-07-095 Discontinue liquor sales, 314-07-100 Death or incapacity of licensee, 314-07-110 Are liquor license fees refundable?, and 314-07-121 Board delegation of authority to make initial threshold decisions.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on May 6, 2015, at 10:00 a.m.

Date of Intended Adoption: May 13, 2015.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by May 6, 2015.

Assistance for Persons with Disabilities: Contact Karen McCall by May 6, 2015, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to review the chapter as part of the board's ongoing rules review process. Chapter 314-07 WAC has been reviewed for relevance, clarity, and accuracy.

Reasons Supporting Proposal: The purpose of this rule making is to review the chapter as part of the board's ongoing rules review process.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.010.

Statute Being Implemented: RCW 66.24.010.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1615; and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

March 25, 2015
Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 10-10-126, filed 5/5/10, effective 6/5/10)

WAC 314-07-010 Definitions. Following are definitions for the purpose of this title. Other definitions are in WAC 314-01-005 and RCW 66.08.010.

(1) "Applicant" or "liquor license applicant" means any person or business entity who is considered by the board as a true party of interest in a liquor license or permit application, as outlined in WAC 314-07-035.

(2) "Building" means a structure with floor to ceiling solid walls and a roof.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs, advertising, etc.

~~((3))~~ (4) "Financier" means any person or entity who has made or will make an investment in the licensed business of more than ten thousand dollars. A "financier" can be someone who provides money as a gift, someone who loans money to the business and expects to be paid back the amount of the loan without interest, or someone who invests money into the business expecting a percentage of the profits, but accepts the risk that there may not be a full return on the investment. These persons or entities shall submit appropriate investigation level "financier" financial documents.

~~((4))~~ (5) "Licensee" or "liquor licensee" means any person or entity that holds a liquor license or permit, or any person or entity who is a true party of interest in a liquor license or permit, as outlined in WAC 314-07-035.

~~((5))~~ (6) "Public institution" means a public college or university. (See WAC 314-07-020 regarding the liquor control board notifying public institutions of liquor license applications.)

AMENDATORY SECTION (Amending WSR 10-10-126, filed 5/5/10, effective 6/5/10)

WAC 314-07-015 General information about liquor licenses. (1) A person or entity must meet ~~((certain))~~ required qualifications to receive a liquor license, which are continuing qualifications in order to maintain the license.

(2) A liquor license applicant may not exercise any of the privileges of a liquor license until the board approves the license application (see WAC 314-07-055 regarding temporary licenses).

(3) In approving a liquor license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a liquor license.

AMENDATORY SECTION (Amending WSR 10-10-126, filed 5/5/10, effective 6/5/10)

WAC 314-07-020 Liquor license qualifications and application process. Each liquor license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the liquor license application. Following is a general outline of the liquor license application process.

(1) Per RCW 66.24.010, the board shall send a notice to the local authority regarding the liquor license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(a) The local authority may submit a written request to the board for an extension for good cause shown.

(b) If the application is within a board-recognized alcohol impact area, the board will give the local authority sixty days to comment on the liquor license application or assumption (see WAC 314-12-215(7) for more information).

(2) For an application for a new liquor license privilege, the board may require a public posting notice to be posted at the site for fourteen days.

(3) For an application for a new liquor license privilege, the board shall notify ~~((any))~~ schools, churches, or public colleges or universities within five hundred feet of the business (see RCW 66.24.010(9) for more information).

(4) The board will verify that the proposed business meets the minimum requirements for the type of license or privilege requested.

(5) The board may conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-07-040 and 314-07-045.

(6) The board may conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business ~~((, the applicants' right to the real and personal property, and to verify the true party(ies) of interest)).~~

(7) The board will conduct an investigation to establish the applicant's exclusive right to the real and personal property and to verify the true party(ies) of interest.

(8) The board may provide a briefing on liquor laws and rules.

~~((8))~~ (9) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license or privilege requested.

~~((9))~~ (10) Per RCW 66.24.010 (2)(a), all applicants must have resided in the state of Washington for at least one month prior to issuance of a liquor license. For a corporation or a limited liability company, the entity meets this residency requirement if the entity was formed in Washington or has a certificate of authority to do business in Washington.

~~((10))~~ (11) All applicants and true parties of interest must be at least twenty-one years of age.

(12) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application will be administratively closed.

AMENDATORY SECTION (Amending WSR 10-10-126, filed 5/5/10, effective 6/5/10)

WAC 314-07-035 What persons or entities have to qualify for a liquor license? Per RCW 66.24.010(1), a liquor license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest** - For purposes of this title, "true party of interest" means:

True party of interest	Persons to be qualified
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	<ul style="list-style-type: none"> • All general partners and spouses; • All limited partners that have more than 10% interest in the partnership and their spouses.
Limited liability company	<ul style="list-style-type: none"> • All members <u>(or persons with equivalent title)</u> with more than 10% interest in the LLC and spouses. (Note: In order for the liquor control board to identify the persons to be qualified, we will need to know all parties that have an interest in the limited liability company or have a pending interest.) • All managers <u>(or persons with equivalent title)</u> and their spouses.
Privately held corporation	<ul style="list-style-type: none"> • All corporate officers (or persons with equivalent title) <u>and their spouses.</u> • All stockholders <u>(or persons with equivalent title) and their spouses</u> who hold more than 10% of the issued or outstanding stock. (Note: In order for the liquor control board to identify the persons to be qualified, we will need to know all parties who have been issued or will be issued corporate stock.)
Publicly held corporation	All corporate officers (or persons with equivalent title).
Multi-level ownership structures	The liquor control board will review each entity to determine which individuals are to qualify according to the guidelines in this rule.

True party of interest	Persons to be qualified
Any entity	<p>Any person who is in receipt of, or has the right to receive, more than ten percent of the gross or net sales from the licensed business during any full or partial calendar or fiscal year. For the purposes of this chapter:</p> <p>((■)) "Gross sales" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business.</p> <p>((■)) "Net sales" means gross sales minus cost of goods sold.</p>

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent (as determined by the board) on a fixed or percentage basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's pre-bonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(d) A person or entity receiving payment of franchise fees on a fixed or percentage basis under a bona fide franchise agreement, unless the person or entity receiving payment of franchise fees exercises control over or participates in the management of the licensed business.

(3) **Financiers** - The board may conduct a financial investigation of financiers.

(4) **Persons who exercise control of business** - The board may conduct an investigation of any person or entity who exercises any control over the applicant's business operations.

In cases where there is an entity who is in control of the day-to-day business operation (other than the owner) because of an agreement between the owner and the operator, the operating party becomes a true party of interest. The operator must meet all the qualifications of any other true party of interest and if approved, must be the licensee. The owner may be required to be named on the license as a party of interest based on the terms of the agreement, but will not normally be required to meet all the qualifications of a true party of interest.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-040 What criminal history might prevent a liquor license applicant from receiving or keeping a liquor license? (1) When the board processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The board will not normally issue a liquor license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

(2) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board ~~((will))~~ may administratively close the application.

(3) The board will not normally issue a liquor license to any person who has demonstrated a pattern of disregard for laws and rules.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-045 What liquor law or rule violation history might prevent an applicant from receiving a liquor license? (1) The board will conduct an investigation of all applicants' liquor law or rule administrative violation history. The board will not normally issue a liquor license to a person, or to an entity with a true party of interest, who has the following administrative violation notice history ~~((or to any person who has demonstrated a pattern of disregard for laws or rules))~~.

Violation Type (see WAC 314-29-020 through 314-29-035)	Period of Consideration
((■)) Three or more public safety violations(⁂);	((■)) Violations issued within two years of the date the application is received by the board's licensing and regulation division.
((■)) Four or more conduct violations(⁂); or	((■)) Violations issued within the last two years the true party(ies) of interest were licensed.
((■)) Five or more regulatory violations.	

(2) The board will not normally issue a liquor license to a person who has demonstrated a pattern of disregard for laws or rules including, but not limited to, written and/or verbal warnings.

AMENDATORY SECTION (Amending WSR 10-10-126, filed 5/5/10, effective 6/5/10)

WAC 314-07-055 Temporary retail license. Applicants may (~~apply for~~) request a temporary retail liquor license in addition to an annual license for the same business. If granted, the temporary license allows the applicant to operate for a period of up to (~~sixty~~) one hundred twenty days while the annual license application is being processed.

Type of Application	Qualification and process to receive a temporary retail license
(1) New business, existing licensed business, or new license type: <ul style="list-style-type: none"> Applicant is applying for a license at a business location that does not hold a current, valid liquor license. Applicant is applying for the same license privilege at a location that has a valid license that has not expired. Applicant is applying for a license or a business that has an existing license at the location, but the applicant is applying for a different license privilege(s). 	In order to receive a temporary license, the applicant(s) must: <ul style="list-style-type: none"> Sign the acknowledgment form. Clear a criminal history check, per WAC 314-07-040. Complete a briefing on liquor laws and regulations, per WAC 314-07-020(7).

Type of Application	Qualification and process to receive a temporary retail license
	<ul style="list-style-type: none"> The local authority and any churches, schools, or public colleges or universities within 500 feet of the proposed licensed business must have responded to the liquor control board's notice of liquor license application, or the time period must have passed. See WAC 314-07-020, subsections (1), (2), and (3) for more information. When the annual liquor license is issued, the fee will be pro-rated back to the date of issuance of the temporary license.

(2) For the purposes of this section, "retail liquor license" shall include all classes of liquor licenses that allow the holder to sell liquor directly to the public.

(3) The privilege of having a temporary license issued upon an application for license does not apply to breweries or wineries.

(4) A temporary license under subsection (1) above may be issued for a distributor license applicant.

AMENDATORY SECTION (Amending WSR 10-10-126, filed 5/5/10, effective 6/5/10)

WAC 314-07-060 Reasons for denial or cancellation of a temporary license. Following is a list of reasons a temporary permit may not be issued or can be revoked. Per RCW 66.24.010, the board has broad discretionary authority to approve or deny a liquor license or permit application. Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing.

(1) An applicant who has received a temporary license and their application is later administratively closed, and they reapply for a liquor license at the same location.

(2) The local authority objects for any reason.

(3) The applicant affirmatively refuses to submit documents requested by the board to conduct the application investigation.

(4) The applicant accrues or is involved in ((a)) an administrative violation committed while operating under a temporary license.

(5) The investigator is unable to determine the true party of interest.

(6) The applicant fails to meet the basic requirements of the license.

~~((7))~~ ~~((Denial of the permanent license is recommended to the board.))~~ An objection is received from a privately or publicly funded elementary or secondary school within five hundred feet of the proposed location.

~~((8))~~ Violation history of the applicant is found to be sufficient to raise the application to threshold decision.

~~((9))~~ Upon denial of the permanent license, the temporary license will be immediately revoked.

AMENDATORY SECTION (Amending WSR 10-10-126, filed 5/5/10, effective 6/5/10)

WAC 314-07-065 Reasons the board may deny a liquor license application. Following is a list of reasons the board may deny a liquor license application. Per RCW 66.24.010, the board has broad discretionary authority to approve or deny a liquor license or permit application.

(1) Failure to meet qualifications or requirements for the specific liquor license or privilege, as outlined in this Title 314 WAC and Title 66 RCW.

(2) Failure by any applicant or financier to submit information or documentation requested by the board.

(3) Refusal by any applicant or financier to submit information or documentation requested by the board.

~~((4))~~ Misrepresentation of fact by any applicant or financier.

~~((4))~~ ~~((5))~~ Failure to meet the criminal history standards outlined in WAC 314-07-040.

~~((5))~~ ~~((6))~~ Failure to meet the liquor law or rule violation history standards outlined in WAC 314-07-045.

~~((6))~~ ~~((7))~~ Source of funds used for the acquisition, startup and operation of the business is questionable or unverified.

~~((7))~~ ~~((8))~~ Objection from the local authority or from the public (see WAC 314-09-010 and RCW 66.24.010(8)).

~~((8))~~ ~~((9))~~ Objection from the following entities if they are within five hundred feet of the proposed business: A public school, a private school that meets the requirements of chapter 28A.195 RCW, a church, or a public college or university. See WAC 314-09-010 and RCW 66.24.010(9) for more information. Note: Per RCW 66.24.010(9), the board may not issue a new liquor license if the board receives objection from a public school within five hundred feet of the proposed licensed business.

~~((9))~~ ~~((10))~~ The board determines that the issuance of the liquor license will not be in the best interest of the welfare, health, or safety of the people of the state.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-070 Process if the board denies a liquor license application. If the board denies a liquor license application, the applicants may:

(1) Request an administrative hearing per chapter 34.05 RCW, the Administrative Procedure Act.

~~((2))~~ ~~((Reapply for the license no sooner than one year from the original denial date.))~~ Not apply for any license for one year from the date of the board's final order. Exceptions may be granted on a case-by-case basis at the sole discretion of the board or their delegated staff.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-090 Change of business name. (1) If you wish to change the name of your business, you must apply for a change of trade name with the department of ~~((licensing master))~~ revenue, business license service.

(2) If you wish to ~~((change))~~ amend your corporation or limited liability company name, you must apply for a change of name through the secretary of state.

(3) See WAC 434-12 for guidelines for trade names.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-095 Discontinue liquor sales. You must notify the board's enforcement and education division if you plan to stop ~~((doing business))~~ liquor sales for more than thirty days, or if you plan to permanently discontinue liquor sales.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-100 Death or incapacity of licensee. (1) The appointed guardian, executor, administrator, receiver, trustee, or assignee must notify the board's licensing and regulation division in the event of the death, incapacity, receivership, bankruptcy, or assignment for benefit of creditors of any licensee.

(2) Subject to a criminal background check, the board may give the appointed guardian, executor, administrator, receiver, trustee, or assignee written approval to continue liquor sales on the licensed business premises for the duration of the existing license and to renew the license when it expires.

(3) When the matter is resolved by the court, the true party(ies) of interest must apply for a liquor license for the business.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-110 Are liquor license fees refundable? When a license is suspended, revoked, or ~~((annulled))~~ cancelled, or the licensed business is discontinued, the unused portion of the liquor license fee will not be refunded. There are two exceptions:

(1) Per RCW 66.24.420 (1)(b), a spirits, beer, and wine restaurant that is located in an unincorporated city or town may receive a refund of the unused portion of their license fees, calculated per calendar quarter.

(2) Per RCW 66.24.015, if a liquor license application is denied or is administratively closed by the board, the application fee will be refunded less a seventy-five dollar ~~((non-refundable))~~ nonrefundable processing fee.

AMENDATORY SECTION (Amending WSR 09-21-048, filed 10/14/09, effective 11/14/09)

WAC 314-07-121 Board delegation of authority to make initial threshold determinations. (1) The board may delegate to the licensing and regulation division director the authority to make initial threshold determinations on liquor license applications and renewals where:

(a) Objections have been submitted; or

(b) The applicant/licensee appears to be ineligible for a license due to failure to meet requirements under statute or rule. Failure to meet eligibility requirements includes data obtained through a criminal background check or criminal history record information (CHRI) report.

(2) Threshold determinations will be made in accordance with the provisions of RCW 66.24.010 as well as all other relevant sections of state law and Title 314 WAC. The licensing and regulation division director shall:

(a) Give substantial weight to objections from a local authority where objections are based on chronic illegal activity;

(b) Give due consideration to the location of a new liquor license application as it relates to the proximity to churches, schools, and public institutions as well as ~~((either))~~ any considerations raised by the local authority.

(3) If the licensing and regulation director determines that the board will seek denial of a license application or non-renewal of an existing license, an aggrieved applicant/licensee may request an adjudicative hearing before an administrative law judge (see chapter 314-09 WAC).

(4) If the licensing and regulation director determines that the board will seek to approve a license or renewal over the objection of the local authority, the local authority may request an adjudicative hearing before an administrative law judge (see chapter 314-09 WAC). The licensing and regulation director will determine whether an adjudicative hearing will be granted to the local authority.

An adjudicative hearing will be granted where the objection is based on alleged conduct related to public safety within the jurisdiction of the board under Title 66 RCW.

WSR 15-08-035

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed March 25, 2015, 10:57 a.m.]

Supplemental Notice to WSR 14-21-103.

Preproposal statement of inquiry was filed as WSR 14-12-100.

Title of Rule and Other Identifying Information: WAC 314-55-010 Definitions, 314-55-015 General information about marijuana licenses, 314-55-017 Conditional sales prohibited, 314-55-018 Prohibited practices—Money advances—Contracts—Gifts—Rebates, etc., 314-55-020 Marijuana license qualifications and application process, 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license?, 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer

license?, 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?, 314-55-079 What is a marijuana retailer and what are the requirements and fees related to a marijuana retailer license?, 314-55-083 What are the security requirements for a marijuana licensee?, 314-55-085 What are the requirements for a marijuana licensee?, 314-55-086 What are the mandatory signs a marijuana licensee must post on a licensed premises?, 314-55-089 What are the tax and reporting requirements for marijuana licensees?, 314-55-095 Marijuana servings and transaction limitations, 314-55-097 Marijuana waste disposal—liquids and solids, 314-55-102 Quality assurance testing, 314-55-103 Good laboratory practices checklist, 314-55-104 Marijuana processor license extraction requirements, 314-55-105 Packaging and labeling requirements, 314-55-135 Discontinue marijuana sales, 314-55-210 Will the liquor control board seize or confiscate marijuana, useable marijuana, and marijuana infused products?, 314-55-510 What options does a licensee have once he/she receives a notice of an administrative violation?, 314-55-515 What are the penalties if a marijuana license holder violates a marijuana law or rule?, 314-55-520 Group 1 violations against public safety, 314-55-525 Group 2 regulatory violations, 314-55-530 Group 3 violations, and 314-55-535 Group 4 marijuana producer violations.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on May 6, 2015, at 10:00 a.m.

Date of Intended Adoption: May 13, 2015.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by May 6, 2015.

Assistance for Persons with Disabilities: Contact Karen McCall by May 6, 2015, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current marijuana rules need to be revised and new rules need to be adopted to provide additional clarity to marijuana applicants and licensees.

Reasons Supporting Proposal: This is a new industry in the state of Washington. Applicants and licensees need to know the requirements and activities allowed under the marijuana licenses.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.342, 69.50.345, 69.50.325, 69.50.535.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726; and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

March 25, 2015
Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-010 Definitions. Following are definitions for the purpose of this chapter. Other definitions are in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the board as a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

(5) "Consultant" means an expert who provides advice or services in a particular field, whether a fee is charged or not. A consultant who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year is a true party of interest and subject to the requirements of WAC 314-55-035. A consultant who exercises any control over an applicant's or licensee's business operations is also subject to the requirements of WAC 314-55-035(4).

(6) "Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

~~((6))~~ (7) "Employee" means any person performing services on a licensed premises for the benefit of the licensee.

(8) "Financier" means any person or entity, other than a banking institution, that has made or will make an investment in the licensed business. A financier can be a person or entity that provides money as a gift, loans money to the applicant/business and expects to be paid back the amount of the loan with or without interest, or expects any percentage of the profits from the business in exchange for a loan or expertise.

~~((7))~~ (9) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

~~((8))~~ (10) "Intermediate product" means marijuana flower lots or other material lots that have been converted by a marijuana processor to a marijuana concentrate or marijuana-infused product that must be further processed prior to retail sale.

(11) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

~~((9))~~ (12) "Licensee" or "marijuana licensee" means any person or entity that holds a marijuana license, or any person or entity who is a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

~~((10))~~ (13) "Lot" means either of the following:

(a) The flowers from one or more marijuana plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plants. A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

~~((11))~~ (14) "Marijuana strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

~~((12))~~ (15) "Member" means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice-president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

~~((13))~~ (16) "Paraphernalia" means items used for the storage or use of usable marijuana, marijuana concentrates, or marijuana-infused products, such as, but not limited to, lighters, roach clips, pipes, rolling papers, bongs, and storage containers. Items for growing, cultivating, and processing marijuana, such as, but not limited to, butane, lights, and chemicals are not considered "paraphernalia."

(17) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, ~~(and)~~ insecticides, and cloning agents.

~~((14))~~ (18) "Perimeter" means a property line that encloses an area.

~~((15))~~ (19) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

~~((16))~~ (20) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

~~((17))~~ (21) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

~~((18))~~ (22) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

~~((19))~~ (23) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable non-profit organization, city, county, state, or federal government.

~~((20))~~ (24) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

~~((21))~~ (25) "Secondary school" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

~~((22))~~ (26) "Selling price" means the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value. Selling price means the true value of the product sold as determined or agreed to by the board. For purposes of this subsection:

(a) "Product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products; and

(b) "True value" means market value based on sales at comparable locations in the state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. In the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributed to the product.

(27) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-015 General information about marijuana licenses. (1) A person or entity must meet certain qualifications to receive a marijuana license, which are continuing qualifications in order to maintain the license.

(2) All applicants and employees working in each licensed establishment must be at least twenty-one years of age.

(3) Minors restricted signs must be posted at all marijuana licensed premises.

(4) A marijuana license applicant may not exercise any of the privileges of a marijuana license until the board approves the license application.

(5) The board will not approve any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence.

(6) The board will not approve any marijuana license for a location on federal lands.

(7) The board will not approve any marijuana retailer license for a location within another business. More than one license could be located in the same building if each licensee has their own area separated by full walls with their own entrance. Product may not be commingled.

(8) Every marijuana licensee must post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(9) In approving a marijuana license, the board reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a marijuana license.

(10) A marijuana processor or retailer licensed by the board shall conduct the processing, storage, and sale of marijuana-infused products using sanitary practices and ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(11) Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on the licensed premises.

NEW SECTION

WAC 314-55-017 Conditional sales prohibited. Conditional sales of marijuana products are prohibited.

(1) Marijuana producers and processors are prohibited from requiring the purchase of other products and/or services by another marijuana licensee as a condition of a transaction of marijuana product. Products and services include, but are not limited to, paraphernalia, lighters, promotional items, unreasonable processing and/or packaging charges.

(2) Marijuana retailers are prohibited from requiring a customer to purchase other products and/or services as a condition to purchasing a marijuana product. Products and services include, but are not limited to, paraphernalia, lighters, promotional items, memberships, and bags, boxes, or containers.

(3) The selling price of marijuana product must be indicative of the true value when sold without any other products or services.

NEW SECTION

WAC 314-55-018 Prohibited practices—Money advances—Contracts—Gifts—Rebates, etc. (1) No industry member or marijuana retailer shall enter into any agreement which causes undue influence over another retailer or industry member. This rule shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of marijuana that are made in accordance with usual and common business practice and that are otherwise in compliance with the rules.

(2) No marijuana producer or processor shall advance and no marijuana retailer shall receive money or moneys'

worth under an agreement written or unwritten or by means of any other business practice or arrangement such as:

- (a) Gifts;
- (b) Discounts;
- (c) Loans of money;
- (d) Premiums;
- (e) Rebates;
- (f) Free product of any kind except as allowed by WAC 314-55-083; or
- (g) Treats or services of any nature whatsoever except such services as are authorized in this rule.

(3) "Industry member" means a licensed marijuana producer, marijuana processor, marijuana retailer, their authorized representatives, and any affiliates, subsidiaries, officers, partners, financiers, agents, employees, and representatives of any industry member.

(4) No industry member or employee thereof shall sell to any retail licensee or solicit from any such licensee any order for any marijuana tied in with, or contingent upon, the retailer's purchase of some other marijuana, or any other merchandise, paraphernalia, property, or service.

(5) If the board finds in any instance that any licensee has violated this regulation, then all licensees involved shall be held equally responsible for such violation.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-020 Marijuana license qualifications and application process. Each marijuana license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the marijuana license application. The application requirements for a marijuana license include, but are not necessarily limited to, the following:

(1) Per RCW 69.50.331, the board shall send a notice to cities and counties, and may send a notice to tribal governments or port authorities regarding the marijuana license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(2) The board will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(3) The board will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the board and submission of fingerprints to a vendor approved by the board. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check. Financiers must meet the three month residency requirement.

(4) The board will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(5) The board may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

(6) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license requested.

(7) Per RCW 69.50.331 (1)(b), all applicants applying for a marijuana license must have resided in the state of Washington for at least three months prior to application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a marijuana license must be formed in Washington. All members must also meet the three month residency requirement. Managers or agents who manage a licensee's place of business must also meet the three month residency requirement.

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

Producer	Processor	Retailer
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	<u>Transportation of product</u>
Destruction of waste product	Destruction of waste product	Destruction of waste product

Producer	Processor	Retailer
Description of growing operation including growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process	Description of the types of products to be processed at this location together with a complete description of all equipment <u>to include all marijuana-infused edible processing facility equipment</u> and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

After obtaining a license, the license holder must notify the board in advance of any substantial change in their operating plan. Depending on the degree of change, prior approval may be required before the change is implemented.

(10) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

(11) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

(12) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license? (1) When the board processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The board will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points

Description	Time period during which points will be assigned	Points assigned
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

(2) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board will administratively close the application.

(3) The board may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:

Exception to criminal history point assignment. ((This exception to the criminal history point assignment will expire on July 1, 2014:))

(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.

(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;

(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of

marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.

(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of product involved and other circumstances surrounding the conviction.

(4) Once licensed, marijuana licensees must report any criminal convictions to the board within fourteen days.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license? (1) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer can also produce and sell marijuana plants, seed, and plant tissue culture to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the board deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production is initially limited to two million square feet, to be increased based on marketplace demand, but not to exceed eight and one-half million square feet without board approval. Applicants must designate on their operating plan the size category of the production premises and the amount

of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 - Less than two thousand square feet;

(b) Tier 2 - Two thousand square feet to ten thousand square feet; and

(c) Tier 3 - Ten thousand square feet to thirty thousand square feet.

(7) The board may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum of two million square feet the board will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the board may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds two million square feet, the board reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or

(b) Indoor grows - Six months of their annual harvest.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license? (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale ~~((to))~~ marijuana retailers. A marijuana processor license also allows the licensee to process and package marijuana into intermediate products for sale at wholesale to other marijuana processors.

(2) A marijuana processor is allowed to blend tested ~~((usable))~~ usable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) A marijuana processor licensee must obtain approval from the liquor control board for all marijuana-infused products, labeling, and packaging prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the liquor control board for approval.

If the liquor control board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing per chapter 34.05 RCW, Administrative Procedure Act.

(4) Marijuana-infused edible products in solid form must meet the following requirements:

(a) If there is more than one serving in the package, each serving must be packaged individually in childproof packaging (see WAC 314-55-105(7)) and placed in the outer package.

(b) The label must prominently display the number of servings in the package.

(c) Marijuana-infused solid edible products must be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(d) All marijuana-infused solid edibles must prominently display on the label "This product contains marijuana."

(5) Marijuana-infused edible products in liquid form must meet the following requirements:

(a) If there is more than one serving in the package, a measuring device must be included in the package with the product.

(b) The label must prominently display the number of servings in the package and the amount of product per serving.

(c) Marijuana-infused liquid edibles must be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(d) All marijuana-infused liquid edibles must prominently display on the label "This product contains marijuana."

(6) A marijuana processor is limited in the types of food or drinks they may infuse with marijuana (~~(to create an infused edible product)~~). Marijuana-infused products that are especially appealing to children are prohibited. Marijuana-infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.

(a) To reduce the risk to public health, (~~(food defined as)~~) potentially hazardous foods as defined in WAC (~~(246-215-0115(88))~~) 246-215-01115 may not be infused with marijuana. (~~(These foods are)~~) Potentially hazardous (~~(as they)~~) foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. (~~(The board may designate other food items that may not be infused with marijuana.)~~) Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(~~(4)~~) (b) Other food items that may not be infused with marijuana to be sold in a retail store are:

(i) Any food that has to be acidified to make it shelf stable;

(ii) Food items made shelf stable by canning or retorting;

(iii) Fruit or vegetable juices (this does not include shelf stable concentrates);

(iv) Fruit or vegetable butters;

(v) Pumpkin pies, custard pies, or any pies that contain egg;

(vi) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(vii) Dried or cured meats.

(c) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils

may not be infused with any other substance, including herbs and garlic.

(d) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(e) Per WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

(f) The liquor control board may designate other food items that may not be infused with marijuana.

(7) The recipe for any (~~(food infused with marijuana to make an edible product)~~) marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana (~~(producer's)~~) processor's licensed premises and made available for inspection by the (~~(WSLCB or their)~~) liquor control board or its designee.

(~~(5)~~) (8) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(~~(6)~~) (9) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(~~(7)~~) (10) A marijuana processor producing a marijuana-infused solid or liquid product meant to be ingested orally in a processing facility as required in WAC 314-55-015(10) must pass a processing facility inspection. Ongoing annual processing facility compliance inspections may be required. The liquor control board will contract with the department of agriculture to conduct required processing facility inspections. All costs of inspections are borne by the licensee and the hourly rate for inspection is sixty dollars. A licensee must allow the liquor control board or their designee to conduct physical visits and inspect the processing facility, recipes and required records per WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice. Failure to pay for the processing facility inspection or to follow the processing facility requirements outlined in this section and WAC 314-55-015 will be sufficient grounds for the board to suspend or revoke a marijuana license.

(11) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana processor application window after the initial evaluation of the applications that are received and processed, and at subsequent times when the board deems necessary.

~~((8))~~ (12) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

~~((9))~~ (13) Marijuana processor licensees are allowed to have a maximum of six months of their average ~~(usable)~~ usable marijuana and six months average of their total production on their licensed premises at any time.

~~((10))~~ (14) A marijuana processor must accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license? (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana concentrates, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) ~~((Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101.))~~ Marijuana-infused products listed in WAC 314-55-077(6) are prohibited for sale by a marijuana retail licensee.

(3) Internet sales and delivery of product to customers is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below ~~((their))~~ the current acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(8) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in the transportation rules in WAC 314-55-085.

(9) A marijuana retailer may ~~((not))~~ only accept ~~((a))~~ returns of ~~((product that has been opened))~~ marijuana products containing defective electronic components. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

AMENDATORY SECTION (Amending WSR 14-07-116, filed 3/19/14, effective 4/19/14)

WAC 314-55-083 What are the security requirements for a marijuana licensee? The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises. All non-employee visitors to the licensed premises, other than retail store customers, shall be required to hold and properly display an identification badge issued by the licensee at all times while on the licensed premises. A log must be kept and maintained showing the full name of each visitor entering the licensed premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit. All log records must be maintained on the licensed premises for a period of three years and are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the liquor control board or law enforcement officer upon request.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.

(3) **Surveillance system.** At a minimum, a licensed premises must have a complete video surveillance system with minimum camera resolution of 640x470 ~~((pixel and))~~ pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible ~~((and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area. The requirements include image acquisition, video recording, management and monitoring hardware and support systems)).~~ All cameras must be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility shall be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously twenty-four hours per day and at a minimum of ten frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the liquor control board or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.

(a) ~~((All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of ingress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed cam-~~

era coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points:

(b) Camera placement shall allow for the clear and certain identification of any individual on the licensed premises.

(c) All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions. The surveillance system storage device must be secured on-site in a lock box, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

(d) All perimeter fencing and gates enclosing an outdoor grow operation must have full video surveillance capable of clearly identifying any activities occurring within twenty feet of the exterior of the perimeter. Any gate or other entry point that is part of the enclosure for an outdoor growing operation must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of the exterior, twenty-four hours a day. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.

(e) Areas where marijuana is grown, cured or manufactured including destroying waste, shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear, unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities at all times.

(f) Controlled areas include:

(i) Any area within an indoor, greenhouse or outdoor room or area where marijuana is grown, or marijuana or marijuana waste is being moved within, processed, stored, or destroyed. Rooms or areas where marijuana or marijuana waste is never present are not considered control areas and do not require camera coverage.

(ii) All point-of-sale (POS) areas.

(iii) Twenty feet of the exterior of the perimeter of all required fencing and gates enclosing an outdoor grow operation. Any gate or other entry point that is part of the required enclosure for an outdoor growing operation must be lighted in low-light conditions. A motion detection lighting system may be employed to light the gate area in low-light conditions.

(iv) Any room or area storing a surveillance system storage device.

(b) All marijuana, marijuana concentrates, or marijuana-infused products that are intended to be removed or transported ~~((from marijuana producer to marijuana processor and/or marijuana processor to marijuana retailer))~~ between two licensed premises shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the liquor control board or designees.

~~((g) All camera recordings must be continuously recorded twenty-four hours a day. All surveillance recordings must be kept for a minimum of forty-five days on the~~

~~licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the board or law enforcement officer upon request.))~~

(4) **Traceability:** To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the board. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts, marijuana-infused products, samples, and marijuana waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the board:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana, marijuana extract, marijuana concentrates, marijuana-infused product, or marijuana waste is to be destroyed;

(d) When usable marijuana, marijuana concentrates, or marijuana-infused products are transported;

(e) Any theft of usable marijuana, marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, seed, plant tissue or other item containing marijuana;

(f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed, a lot or batch of marijuana, marijuana extract, marijuana-infused product, or marijuana waste may be destroyed;

(g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before ~~((a lot))~~ marijuana plants, seeds, plant tissue cultures, or lots of marijuana ~~((is))~~ are transported from a producer to another producer or to a processor;

(h) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before usable marijuana, marijuana concentrates, or marijuana-infused products are transported from a processor to another processor or to a retailer;

(i) Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happen when a plant is moved from the seed germination or clone area to the vegetation production area;

(j) A complete inventory of all marijuana, seeds, plant tissue, seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract, marijuana concentrates, marijuana-infused products, and marijuana waste;

(k) All point of sale records;

(l) Marijuana excise tax records;

(m) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;

(n) All free samples provided to another licensee for purposes of negotiating a sale;

(o) All samples used for testing for quality by the producer or processor;

(p) Samples containing usable marijuana provided to retailers;

(q) Samples provided to the board or their designee for quality assurance compliance checks; and

(r) Other information specified by the board.

(5) Start-up inventory for marijuana producers.

Within fifteen days of starting production operations a producer must have all nonflowering marijuana plants physically on the licensed premises. The producer must, within twenty-four hours, record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

(6) **Samples.** Free samples of usable marijuana may be provided by producers or processors, or used for product quality testing, as set forth in this section.

(a) Samples are limited to two grams and a producer may not provide any one licensed processor more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The producer must record the amount of each sample and the processor receiving the sample in the traceability system. The outgoing sample must be clearly labeled as a sample to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the sample in the traceability system prior to sampling.

(b) Samples are limited to two grams and a processor may not provide any one licensed retailer more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system. The outgoing sample must be clearly labeled as a sample to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the sample in the traceability system prior to sampling.

(c) Samples are limited to two units and a processor may not provide any one licensed retailer more than six ounces of marijuana infused in solid form per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system. The outgoing sample must be clearly labeled as a sample to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the sample in the traceability system prior to sampling.

(d) Samples are limited to two units and a processor may not provide any one licensed retailer more than twenty-four ounces of marijuana-infused liquid per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system. The outgoing sample

must be clearly labeled as a sample to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the sample in the traceability system prior to sampling.

(e) Samples are limited to one-half gram and a processor may not provide any one licensed retailer more than one gram of marijuana-infused extract meant for inhalation per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system. The outgoing sample must be clearly labeled as a sample to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the sample in the traceability system prior to sampling.

(f) Producers may sample one gram of usable marijuana per strain, per month for quality sampling. Sampling for quality may not take place at a licensed premises. Only the producer or employees of the licensee may sample the usable marijuana for quality. The producer must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(g) Processors may sample one unit, per batch of a new edible marijuana-infused product to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employees of the licensee may sample the edible marijuana-infused product. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(h) Processors may sample up to one quarter gram, per batch of a new marijuana-infused extract for inhalation to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employee(s) of the licensee may sample the marijuana-infused extract for inhalation. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(i) The limits described in subsection ((3)) (6) of this section do not apply to the usable marijuana in sample jars that may be provided to retailers described in WAC 314-55-105(8).

(j) Retailers may not provide free samples to customers.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-085 What are the transportation requirements for a marijuana licensee? (1) Notification of shipment. Upon transporting any marijuana or marijuana product, a producer, processor, retailer, or certified third-party testing lab shall notify the board of the type and amount and/or weight of marijuana and/or marijuana products being transported, the name of transporter, information about the transporting vehicle, times of departure and expected delivery. This information must be reported in the traceability system described in WAC 314-55-083(4).

(2) **Receipt of shipment.** Upon receiving the shipment, the licensee or certified third-party lab receiving the product shall report the amount and/or weight of marijuana and/or marijuana products received in the traceability system.

(3) **Transportation manifest.** A complete printed transport manifest on a form provided by the board containing all information required by the board must be kept with the product at all times.

(4) **Records of transportation.** Records of all transportation must be kept for a minimum of three years at the licensee's location and are subject to inspection.

(5) **Transportation of product.** Marijuana or marijuana products that are being transported must meet the following requirements:

(a) Only the marijuana licensee, an employee of the licensee, or a certified testing lab may transport product;

(b) Marijuana or marijuana products must be in a sealed package or container approved by the board pursuant to WAC 314-55-105;

(c) Sealed packages or containers cannot be opened during transport;

(d) Marijuana or marijuana products must be in a locked, safe and secure storage compartment that is secured to the inside body/compartment of the vehicle transporting the marijuana or marijuana products;

(e) Any vehicle transporting marijuana or marijuana products must travel directly from the shipping licensee to the receiving licensee and must not make any unnecessary stops in between except to other facilities receiving product;

(f) Live plants may be transported in a fully enclosed, windowless locked trailer, or in a secured area within the inside body/compartment of a van or box truck. A secured area is defined as an area where solid or locking metal partitions, cages, or high strength shatterproof acrylic can be used to create a secure compartment in the fully enclosed van or box truck. The secure compartment in the fully enclosed van or box truck must be free of windows. Live plants may not be transported in the bed of a pickup truck, a sports utility vehicle, or passenger car.

(6) For purposes of this chapter, any vehicle assigned for the purposes of transporting marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products shall be considered an extension of the licensed premises and subject to inspection by enforcement officers of the liquor control board. Vehicles assigned for transportation may be stopped and inspected by a liquor enforcement officer at any licensed location, or while en route during transportation.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-086 What are the mandatory signs a marijuana licensee must post on a licensed premises? (1) Notices regarding persons under twenty-one years of age must be conspicuously posted on the premises as follows:

Type of licensee	Sign must contain the following language:	Required location of sign
Marijuana producer, marijuana processor, and marijuana retailer	"Persons under twenty-one years of age not permitted on these premises."	Conspicuous location at each entry to premises.

The board will provide the required notices, or licensees may design their own notices as long as they are legible and contain the required language.

(2) **Signs provided by the board prohibiting opening a package of marijuana or marijuana-infused product in public or consumption of marijuana or marijuana-infused products in public,** must be posted as follows:

Type of premises	Required location of sign
Marijuana retail	Posted in plain view at the main entrance to the establishment.

(3) **The premises' current and valid master license with appropriate endorsements** must be conspicuously posted on the premises and available for inspection by liquor enforcement officers.

(4) Firearms prohibited signs provided by the board must be posted at the entrance of each producer, processor, and retailer licensed location.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees? (1) Marijuana licensees must submit monthly report(s) and payments to the board. The required monthly reports must be:

(a) On a form or electronic system designated by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each marijuana license held; and

(e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the board.

A marijuana producer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale to a licensed marijuana processor or producer.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, other marijuana processors, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana processor licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale of usable marijuana, marijuana

concentrates, and marijuana-infused product to a licensed marijuana retailer.

(4) **Marijuana retailer's licensees:** On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana retailer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each retail sale of usable marijuana (~~(or)~~, marijuana concentrates, and marijuana-infused products.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-095 Marijuana servings and transaction limitations. Marijuana dosage and transaction limitations are as follows:

(1) **Single serving.** A single serving of a marijuana-infused product (~~(amounts to)~~) must not exceed ten milligrams active tetrahydrocannabinol (THC), or Delta 9.

(2) **Maximum number of servings.** The maximum number of servings in any one single unit of marijuana-infused product meant to be eaten or swallowed is ten servings or one hundred milligrams of active THC, or Delta 9, whichever is less. A single unit of (~~(marijuana-infused extract for inhalation)~~) marijuana concentrate cannot exceed one gram.

(3) **Transaction limitation.** A single transaction is limited to one ounce of usable marijuana, sixteen ounces of marijuana-infused product meant to be eaten or swallowed in solid form, seven grams of (~~(marijuana-infused extract for inhalation)~~) marijuana-infused extract or marijuana concentrate for inhalation, and seventy-two ounces of marijuana-infused product in liquid form meant to be eaten or swallowed for persons twenty-one years of age and older.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-097 Marijuana waste disposal—Liquids and solids. (1) Solid and liquid wastes generated during marijuana production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.

(2) Wastewater generated during marijuana production and processing must be disposed of in compliance with applicable state and local laws and regulations.

(3) Wastes from the production and processing of marijuana plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC) to determine if those wastes designate as dangerous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it designates as a dangerous waste. If a generator's waste does designate as a dangerous waste, then that waste(s) is subject to the applicable management standards found in chapter 173-303 WAC.

(a) Wastes that must be evaluated against the dangerous waste regulations include, but are not limited to, the following:

(i) Waste from marijuana flowers, trim and solid plant material used to create an extract (per WAC (~~(315-55-104)~~) 314-55-104).

(ii) Waste solvents used in the marijuana process (per WAC (~~(315-55-104)~~) 314-55-104).

(iii) Discarded plant waste, spent solvents and laboratory wastes from any marijuana processing or quality assurance testing.

(iv) Marijuana extract that fails to meet quality testing.

(b) Marijuana wastes that do not designate as dangerous shall be managed in accordance with subsection (4) of this section.

(c) A marijuana plant, usable marijuana, trim and other plant material in itself is not considered dangerous waste as defined under chapter 173-303 WAC unless it has been treated or contaminated with a solvent.

(4) Marijuana waste that does not designate as dangerous waste (per subsection (3) of this section) must be rendered unusable following the methods in subsection (5) of this section prior to leaving a licensed producer, processor, (~~(retail facility)~~) or laboratory. Disposal of the marijuana waste rendered unusable must follow the methods under subsection (6) of this section.

(a) Wastes that must be rendered unusable prior to disposal include, but are not limited to, the following:

(i) Waste evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."

(ii) Marijuana plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent.

(iii) Solid marijuana sample plant waste possessed by third-party laboratories accredited by the board to test for quality assurance that must be disposed of.

(iv) Other wastes as determined by the LCB.

(b) A producer or processor must provide the board a minimum of seventy-two hours notice in the traceability system described in WAC 314-55-083(4) prior to rendering the product unusable and disposing of it.

(5) The allowable method to render marijuana plant waste unusable is by grinding and incorporating the marijuana plant waste with other ground materials so the resulting mixture is at least fifty percent nonmarijuana waste by volume. Other methods to render marijuana waste unusable must be approved by LCB before implementation.

Material used to grind with the marijuana falls into two categories: Compostable waste and noncompostable waste.

(a) Compostable mixed waste: Marijuana waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:

(i) Food waste;

(ii) Yard waste;

(iii) Vegetable based grease or oils; or

(iv) Other wastes as approved by the LCB.

(b) Noncompostable mixed waste: Marijuana waste to be disposed in a landfill or another disposal method (for example, incinerator) may be mixed with the following types of waste materials:

(i) Paper waste;

(ii) Cardboard waste;

(iii) Plastic waste;

- (iv) Soil; or
- (v) Other wastes as approved by the LCB.
- (6) Marijuana wastes rendered unusable following the method described in subsection (4) of this section can be disposed.
 - (a) Disposal of the marijuana waste rendered unusable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:
 - (i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.
 - (ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.
 - (b) Disposal of the marijuana waste rendered unusable may be managed on-site by the generator in accordance with the standards of chapter 173-350 WAC.
 - (c) A record of the final destination of marijuana waste rendered unusable.

AMENDATORY SECTION (Amending WSR 14-07-116, filed 3/19/14, effective 4/19/14)

WAC 314-55-102 Quality assurance testing. (1) A third-party testing lab must be certified by the board or their vendor as meeting the board's accreditation and other requirements prior to conducting required quality assurance tests. Certified labs will receive a certification letter from the board and must conspicuously display this letter in the lab in plain sight of the customers. The board can summarily suspend a lab's certification if a lab is found out of compliance with the requirements of WAC 314-55-102.

(2) A person with financial interest in a certified third-party testing lab may not have direct or indirect financial interest in a licensed marijuana producer or processor for whom they are conducting required quality assurance tests. A person with direct or indirect financial interest in a certified third-party testing lab must disclose to the board by affidavit any direct or indirect financial interest in a licensed marijuana producer or processor.

(3) As a condition of certification, each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director shall meet the following minimum qualifications:

(a) Has earned, from a college or university accredited by a national or regional certifying authority a doctorate in

the chemical or biological sciences and a minimum of two years' post-degree laboratory experience; or

(b) Has earned a master's degree in the chemical or biological sciences and has a minimum of four years' of post-degree laboratory experience; or

(c) Has earned a bachelor's degree in the chemical or biological sciences and has a minimum of six years of post-education laboratory experience.

(4) As a condition of certification, labs must follow the most current version of the Cannabis Inflorescence and Leaf monograph published by the *American Herbal Pharmacopoeia* or notify the board what alternative scientifically valid testing methodology the lab is following for each quality assurance test. The board may require third-party validation of any monograph or analytical method followed by the lab to ensure the methodology produces scientifically accurate results prior to them using those standards when conducting required quality assurance tests.

(5) As a condition of certification, the board may require third-party validation and ongoing monitoring of a lab's basic proficiency to correctly execute the analytical methodologies employed by the lab. The board may contract with a vendor to conduct the validation and ongoing monitoring described in this subsection. The lab shall pay all vendor fees for validation and ongoing monitoring directly to the vendor.

(6) The lab must allow the board or their vendor to conduct physical visits and inspect related laboratory equipment, testing and other related records during normal business hours without advance notice.

(7) Labs must adopt and follow minimum good lab practices (GLPs), and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the board. The board or authorized third-party organization can conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(8) The general body of required quality assurance tests for marijuana flowers and infused products may include moisture content, potency analysis, foreign matter inspection, microbiological screening, pesticide and other chemical residue and metals screening, and residual solvents levels.

(9) Table of required quality assurance tests defined in the most current version of the Cannabis Inflorescence and Leaf monograph published by the American Herbal Pharmacopoeia.

(a) Marijuana flower lots and other material lots require the following quality assurance tests:

Product	Test(s) Required	Maximum Sample Size (Needed to Complete all Tests)
	Flower Lots and Other Material Lots	
Lots of marijuana flowers	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening	((Up to)) 7 grams

Product	Test(s) Required	Maximum Sample Size (Necessary to Complete all Tests)
<u>Flower Lots and Other Material Lots</u>		
((Infused extract (solvent based) for inhalation made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity	1. Potency analysis 2. Residual solvent test 3. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Infused extract for inhalation made with a CO₂-extractor like hash oil	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Infused extract for inhalation made with ethanol or other approved food grade solvent	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Infused extract (nonsolvent) meant for inhalation infused with kief, hashish, or bubble hash	1. Potency analysis 2. Microbiological screening	Up to 2 grams
Infused edible	1. Potency analysis 2. Microbiological screening	1 unit
Infused liquid like a soda or tonic	1. Potency analysis 2. Microbiological screening	1 unit
Infused topical	1. Potency analysis 2. Microbiological screening	1 unit))
<u>Lots of marijuana and other material that will not be used for extraction</u>	<u>1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening</u>	<u>7 grams</u>

(b) Intermediate products must meet the following requirements:

(i) All intermediate products must be homogenized prior to quality assurance testing;

(ii) A batch of marijuana mix may not exceed five pounds and must be chopped or ground so no particles are greater than 3 mm; and

(iii) All intermediate products require the following quality assurance tests:

Product	Test(s) Required Intermediate Products	Maximum Sample Size
<u>Marijuana mix</u>	<u>1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening</u>	<u>7 grams</u>
<u>Concentrate or extract (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity</u>	<u>1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that has not passed QA testing) 3. Residual solvent test</u>	<u>2 grams</u>
<u>Concentrate or extract made with a CO₂-extractor like hash oil</u>	<u>1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that has not passed QA testing)</u>	<u>2 grams</u>

<u>Product</u>	<u>Test(s) Required Intermediate Products</u>	<u>Maximum Sample Size</u>
<u>Concentrate or extract made with ethanol</u>	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that has not passed QA testing)	2 grams
<u>Concentrate or extract made with approved food grade solvent</u>	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that has not passed QA testing)	2 grams
<u>Concentrate or extract (nonsolvent) such as keif, hashish, or bubble hash</u>	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that has not passed QA testing)	2 grams
<u>Infused cooking oil or fat in solid form</u>	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that has not passed QA testing)	2 grams

(c) All marijuana, marijuana-infused products, and marijuana concentrates sold from a processor to a retailer require the following quality assurance tests:

<u>Product</u>	<u>Test(s) Required End Products</u>	<u>Maximum Sample Size</u>
<u>Infused solid edible</u>	1. Potency Analysis	1 unit
<u>Infused liquid (like a soda or tonic)</u>	1. Potency analysis	1 unit
<u>Infused topical</u>	1. Potency analysis	1 unit
<u>Marijuana mix (loose or rolled)</u>	1. Potency analysis	2 grams
<u>Infused marijuana mix (loose or rolled)</u>	1. Potency analysis	2 grams
<u>Concentrate or marijuana-infused product for inhalation</u>	1. Potency analysis	1 unit

(d) End products consisting of only one intermediate product that has not been changed in any way is not subject to potency analysis.

(10) Independent testing labs may request additional sample material in excess of amounts listed in the table in subsection (9) of this section for the purposes of completing required quality assurance tests. Labs certified as meeting the board's accreditation requirements may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab and return any unused portion of the samples.

(11) Labs certified as meeting the board's accreditation requirements are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but they must have records to prove all marijuana and marijuana-infused products only for the testing purposes described in WAC 314-55-102.

(12) At the discretion of the board, a producer or processor must provide an employee of the board or their designee samples in the amount listed in subsection (9) of this section or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of metals, and used for other quality assurance tests deemed necessary by the board.

All costs of this testing will be borne by the producer or processor.

(13) No lot of usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may be sold or transported until the completion of all required quality assurance testing. Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations under their UBI number prior to quality assurance testing.

(14) Any usable marijuana or marijuana-infused product that passed the required quality assurance tests may be labeled as "Class A." Only "Class A" usable marijuana or marijuana-infused product will be allowed to be sold.

(15) ~~((If a lot of marijuana flowers fails a quality assurance test, any marijuana plant trim, leaf and other usable material from the same plants automatically fails quality assurance testing also.))~~ Upon approval of the board, a lot that fails a quality assurance test and the associated trim, leaf and other usable material may be used to ~~((make a CO₂ or solvent based extract))~~ create extracts using hydrocarbon or CO₂ closed loop system. After processing, the CO₂ or ~~((solvent))~~ hydrocarbon based extract must still pass all required quality assurance tests in WAC 314-55-102.

(16) At the request of the producer or processor, the board may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor.

(17) Labs must report all required quality assurance test results directly into LCB's seed to sale traceability system

within twenty-four hours of completion. Labs must also record in the seed to sale traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the licensee.

NEW SECTION

WAC 314-55-103 Good laboratory practice checklist. A third-party testing lab must be certified by the Washington state liquor control board (WSLCB) or its vendor as meeting the board's accreditation and other requirements prior to conducting required quality assurance tests. The following checklist will be used by the board or its vendor to certify third-party testing labs:

ORGANIZATION	Document Reference	Y	N	NA	Comments
1. The laboratory or the organization of which it is a part of shall be an entity that can be held legally responsible.	-	-	-	-	-
2. The laboratory conducting third-party testing shall have no financial interest in a licensed producer or processor for which testing is being conducted.	-	-	-	-	-
If the laboratory is part of an organization performing activities other than testing and/or calibration, the responsibilities of key personnel in the organization that have an involvement or influence on the testing and/or calibration activities of the laboratory shall be defined in order to identify potential conflicts of interest.	-	-	-	-	-
3. The laboratory shall have policies and procedures to ensure the protection of its client's confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results.	-	-	-	-	-
4. The laboratory is responsible for all costs of initial certification and ongoing site assessments.	-	-	-	-	-
5. The laboratory must agree to site assessments every two years to maintain certification.	-	-	-	-	-
6. The laboratory must allow WSLCB staff or their representative to conduct physical visits and check I-502 related laboratory activities at any time.	-	-	-	-	-
7. The laboratory must report all test results directly into WSLCB's traceability system within twenty-four hours of completion. Labs must also record in the traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the customer.	-	-	-	-	-

HUMAN RESOURCES	Document Reference	Y	N	NA	Comments
8. Job descriptions for owners and all employees: Key staff.	-	-	-	-	-
9. Qualifications of owners and staff: CVs for staff on file.	-	-	-	-	-
a. Have technical management which has overall responsibility for the technical operations and the provision of the resources needed to ensure the required quality of laboratory operations.	-	-	-	-	-
b. Documentation that the scientific director meets the requirements of WSLCB rules.	-	-	-	-	-
c. Chain of command, personnel organization/flow chart, dated and signed by the laboratory director.	-	-	-	-	-

HUMAN RESOURCES	Document Reference	Y	N	NA	Comments
d. Written documentation of delegation of responsibilities (assigned under chapter 314-55 WAC as related to quality assurance testing) to qualified personnel, signed and dated by the laboratory director.	-	-	-	-	-
e. Documentation of employee competency: Prior to independently analyzing samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls). Dated and signed by the laboratory director.	-	-	-	-	-
f. Designate a quality manager (however named) who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the quality system is implemented and followed; the quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources.	-	-	-	-	-
10. Written and documented system detailing the qualifications of each member of the staff.	-	-	-	-	-
The need to require formal qualification or certification of personnel performing certain specialized activities shall be evaluated and implemented where necessary.	-	-	-	-	-
11. Standard operating procedure manual that details records of internal training provided by facility for staff. Laboratory director must approve, sign and date each procedure.	-	-	-	-	-
a. Instructions on regulatory inspection and preparedness.	-	-	-	-	-
b. Instruction on law enforcement interactions.	-	-	-	-	-
c. Information on U.S. federal laws, regulations, and policies relating to individuals employed in these operations, and the implications of these for such employees.	-	-	-	-	-
d. Written and documented system of employee training on hazards (physical and health) of chemicals in the workplace, including prominent location of MSDS sheets and the use of appropriate PPE.	-	-	-	-	-
e. Written and documented system on the competency of personnel on how to handle chemical spills and appropriate action; spill kit on-site and well-labeled, all personnel know the location and procedure.	-	-	-	-	-
f. Information on how employees can access medical attention for chemical or other exposures, including follow-up examinations without cost or loss of pay.	-	-	-	-	-
g. Biosafety and sterile technique training.	-	-	-	-	-
STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
12. As appropriate, laboratory operations covered by procedures shall include, but not be limited to, the following:	-	-	-	-	-
a. Environmental, safety and health activities;	-	-	-	-	-
b. Sample shipping and receipt;	-	-	-	-	-
c. Laboratory sample chain of custody and material control;	-	-	-	-	-

STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
d. Notebooks/logbooks;	-	-	-	-	-
e. Sample storage;	-	-	-	-	-
f. Sample preparation;	-	-	-	-	-
g. Sample analysis;	-	-	-	-	-
h. Standard preparation and handling;	-	-	-	-	-
i. Postanalysis sample handling;	-	-	-	-	-
j. Control of standards, reagents and water quality;	-	-	-	-	-
k. Cleaning of glassware;	-	-	-	-	-
l. Waste minimization and disposition.	-	-	-	-	-
13. The following information is required for procedures as appropriate to the scope and complexity of the procedures or work requested:	-	-	-	-	-
a. Scope (e.g., parameters measured, range, matrix, expected precision, and accuracy);	-	-	-	-	-
b. Unique terminology used;	-	-	-	-	-
c. Summary of method;	-	-	-	-	-
d. Interferences/limitations;	-	-	-	-	-
e. Approaches to address background corrections;	-	-	-	-	-
f. Apparatus and instrumentation;	-	-	-	-	-
g. Reagents and materials;	-	-	-	-	-
h. Hazards and precautions;	-	-	-	-	-
i. Sample preparation;	-	-	-	-	-
j. Apparatus and instrumentation setup;	-	-	-	-	-
k. Data acquisition system operation;	-	-	-	-	-
l. Calibration and standardization;	-	-	-	-	-
m. Procedural steps;	-	-	-	-	-
n. QC parameters and criteria;	-	-	-	-	-
o. Statistical methods used;	-	-	-	-	-
p. Calculations;	-	-	-	-	-
q. Assignment of uncertainty;	-	-	-	-	-
r. Forms used in the context of the procedure.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
14. Allocation of space: Adequate for number of personnel and appropriate separation of work areas.	-	-	-	-	-
15. Arrangement of space.	-	-	-	-	-
a. Allows for appropriate work flow, sampling, lab space separate from office and break areas.	-	-	-	-	-
b. Employee bathroom is separate from any laboratory area.	-	-	-	-	-
16. Adequate eyewash/safety showers/sink.	-	-	-	-	-
17. Procurement controls.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
a. The laboratory shall have procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures shall exist for the purchase, receipt and storage of reagents and laboratory consumable materials relevant for the tests and calibrations.	-	-	-	-	-
b. The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned.	-	-	-	-	-
c. Prospective suppliers shall be evaluated and selected on the basis of specified criteria.	-	-	-	-	-
d. Processes to ensure that approved suppliers continue to provide acceptable items and services shall be established and implemented.	-	-	-	-	-
e. When there are indications that subcontractors knowingly supplied items or services of substandard quality, this information shall be forwarded to appropriate management for action.	-	-	-	-	-
18. Utilities.	-	-	-	-	-
a. Electrical:	-	-	-	-	-
i. Outlets: Adequate, unobstructed, single-use, no multiplug adaptors;	-	-	-	-	-
ii. No extension cords;	-	-	-	-	-
iii. Ground fault circuit interrupters near wet areas.	-	-	-	-	-
b. Plumbing:	-	-	-	-	-
i. Appropriateness of sink usage: Separate for work/personal use;	-	-	-	-	-
ii. Adequate drainage from sinks or floor drains;	-	-	-	-	-
iii. Hot and cold running water.	-	-	-	-	-
c. Ventilation:	-	-	-	-	-
i. Areas around solvent use or storage of waste solvent;	-	-	-	-	-
ii. Vented hood for any microbiological analysis - Class II Type A biosafety cabinet.	-	-	-	-	-
d. Vacuum: Appropriate utilities/traps for prevention of contamination.	-	-	-	-	-
e. Shut-off controls: Located outside of the laboratory.	-	-	-	-	-
19. Waste disposal: Appropriate for the type of waste and compliant with WAC 314-55-097, Marijuana waste disposal—Liquids and solids.	-	-	-	-	-
20. Equipment list.	-	-	-	-	-
Equipment and/or systems requiring periodic maintenance shall be identified and records of major equipment shall include:	-	-	-	-	-
a. Name;	-	-	-	-	-
b. Serial number or unique identification;	-	-	-	-	-
c. Date received and placed in service;	-	-	-	-	-
d. Current location;	-	-	-	-	-
e. Condition at receipt;	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
f. Manufacturer's instructions;	-	-	-	-	-
g. Date of calibration or date of next calibration;	-	-	-	-	-
h. Maintenance;	-	-	-	-	-
i. History of malfunction.	-	-	-	-	-
21. Maintenance.	-	-	-	-	-
a. Regular preventive maintenance of equipment demonstration in logbook including, but not limited to: Thermometer calibration, pipette calibrations, analytical balances, and analytical equipment. Documentation of a schedule and reviewed by the laboratory director.	-	-	-	-	-
b. Documentation of curative maintenance in logbook, signed and dated by laboratory director.	-	-	-	-	-
c. Temperature maintenance logbook for refrigerators.	-	-	-	-	-
d. Decontamination and cleaning procedures for:	-	-	-	-	-
i. Instruments;	-	-	-	-	-
ii. Bench space;	-	-	-	-	-
iii. Ventilation hood.	-	-	-	-	-
e. Documentation of adequacy of training of personnel and responsibility for each maintenance task.	-	-	-	-	-
f. The organization shall describe or reference how periodic preventive and corrective maintenance of measurement or test equipment shall be performed to ensure availability and satisfactory performance of the systems.	-	-	-	-	-
22. Computer systems.	-	-	-	-	-
a. Adequate for sample tracking.	-	-	-	-	-
b. Adequate for analytical equipment software.	-	-	-	-	-
c. Software control requirements applicable to both commercial and laboratory developed software shall be developed, documented, and implemented.	-	-	-	-	-
d. In addition, procedures for software control shall address the security systems for the protection of applicable software.	-	-	-	-	-
e. For laboratory-developed software, a copy of the original program code shall be:	-	-	-	-	-
i. Maintained;	-	-	-	-	-
ii. All changes shall include a description of the change, authorization for the change;	-	-	-	-	-
iii. Test data that validates the change.	-	-	-	-	-
f. Software shall be acceptance tested when installed, after changes, and periodically during use, as appropriate.	-	-	-	-	-
g. Testing may consist of performing manual calculations or checking against another software product that has been previously tested, or by analysis of standards.	-	-	-	-	-
h. The version and manufacturer of the software shall be documented.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
i. Commercially available software may be accepted as supplied by the vendor. For vendor supplied instrument control/data analysis software, acceptance testing may be performed by the laboratory.	-	-	-	-	-
23. Security.	-	-	-	-	-
a. Written facility security procedures during operating and non-working hours.	-	-	-	-	-
b. Roles of personnel in security.	-	-	-	-	-
c. SOP for controlled access areas and personnel who can access.	-	-	-	-	-
d. Secured areas for log-in of sample, and for short and long-term storage of samples.	-	-	-	-	-
24. Storage.	-	-	-	-	-
a. Appropriate and adequate for sample storage over time. The laboratory shall monitor, control and record environmental conditions as required by the relevant specifications, methods and procedures or where they influence the quality of the results. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic disturbances, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned.	-	-	-	-	-
b. Adequate storage of chemical reference standards.	-	-	-	-	-
c. Appropriate storage of any reagents: Fireproof cabinet, separate cabinet for storage of any acids.	-	-	-	-	-
d. Appropriate safe and secure storage of documents etc., archiving, retrieval of, maintenance of and security of data for a period of three years.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
25. Sampling/sample protocols: Written and approved by the laboratory director.	-	-	-	-	-
a. Demonstrate adequacy of the chain-of-custody tracking upon receipt of sample including all personnel handling the sample.	-	-	-	-	-
b. Sampling method (representative of an entire batch) including, but not limited to, homogenization, weighing, labeling, sample identifier (source, lot), date and tracking.	-	-	-	-	-
c. Condition of the sample: Macroscopic and foreign matter inspection - Fit for purpose test. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.	-	-	-	-	-
d. Failed inspection of product: Tracking and reporting.	-	-	-	-	-
e. Return of failed product documentation and tracking.	-	-	-	-	-
f. Disposal of used/unused samples documentation.	-	-	-	-	-
g. Sample preparation, extraction and dilution SOP.	-	-	-	-	-
h. Demonstration of recovery for samples in various matrices (SOPs):	-	-	-	-	-
i. Plant material - Flower;	-	-	-	-	-
ii. Edibles (solid and liquid meant to be consumed orally);	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
iii. Topical;	-	-	-	-	-
iv. Concentrates.	-	-	-	-	-
26. Data protocols.	-	-	-	-	-
a. Calculations for quantification of cannabinoid content in various matrices - SOPs.	-	-	-	-	-
b. Determination of the range for reporting the quantity (LOD/LOQ) data review or generation.	-	-	-	-	-
c. Reporting of data: Certificates of analysis (CA) - Clear and standardized format for consumer reporting.	-	-	-	-	-
d. Documentation that the value reported in the CA is within the range and limitations of the analytical method.	-	-	-	-	-
e. Documentation that qualitative results (those below the LOQ but above the LOD) are reported as "trace," or with a nonspecific (numerical) designation.	-	-	-	-	-
f. Documentation that the methodology has the specificity for the degree of quantitation reported. Final reports are not quantitative to any tenths or hundredths of a percent.	-	-	-	-	-
g. Use of appropriate "controls": Documentation of daily use of positive and negative controls that challenge the linearity of the curve; and/or an appropriate "matrix blank" and control with documentation of the performance for each calibration run.	-	-	-	-	-
27. Chemical assay procedure/methodology.	-	-	-	-	-
28. Proficiency:	-	-	-	-	-
a. Documentation of use of an appropriate internal standard for any quantitative measurements as applicable to the method.	-	-	-	-	-
b. Appropriate reference standards for quantification of analytes, performing and documenting a calibration curve with each analysis.	-	-	-	-	-
c. Demonstration of calibration curve r ² value of no less than 0.995 with a minimum of four points within the range.	-	-	-	-	-
d. Documentation of any proficiency testing as it becomes available. Laboratory director must review, evaluate and report to the WSLCB any result that is outside the stated acceptable margin of error.	-	-	-	-	-
29. Method validation: Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation; or	-	-	-	-	-
30. Level II validation of methodology used for quantification of THC, THCA and CBD for total cannabinoid content (if reporting other cannabinoids, the method must also be validated for those compounds):	-	-	-	-	-
a. Single lab validation parameters are demonstrated for GC, HPLC data review:	-	-	-	-	-
i. Linearity of reference standards;	-	-	-	-	-
ii. Use of daily standard curve;	-	-	-	-	-
iii. Accuracy;	-	-	-	-	-
iv. Precision;	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
v. Recovery (5 determinations not less than 90%);	-	-	-	-	-
vi. Reproducibility over time within a relative standard deviation of 5%.	-	-	-	-	-
b. Dynamic range of the instrumentation: Limits of quantification (LOQ) and limits of detection (LOD).	-	-	-	-	-
c. Matrix extensions for each type of product tested, data review of recovery for:	-	-	-	-	-
i. Solvent-based extract;	-	-	-	-	-
ii. CO ₂ extraction or other "hash oil";	-	-	-	-	-
iii. Extract made with food grade ethanol;	-	-	-	-	-
iv. Extract made with food grade glycerin or propylene glycol;	-	-	-	-	-
v. Infused liquids;	-	-	-	-	-
vi. Infused solids;	-	-	-	-	-
vii. Infused topical preparations;	-	-	-	-	-
viii. Other oils, butter or fats.	-	-	-	-	-
d. Presence of QC samples and recording of daily testing.	-	-	-	-	-
e. Appropriate use of an internal reference standard.	-	-	-	-	-
f. Daily monitoring of the response of the instrument detection system.	-	-	-	-	-
31. Other methods.	-	-	-	-	-
a. Microbiological methods fit for purpose.	-	-	-	-	-
b. Microbial contaminants within limits of those listed in the most recent AHP monograph and otherwise directed by WSLCB.	-	-	-	-	-
c. Moisture content testing fit for purpose. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.	-	-	-	-	-
d. Solvent residuals testing fit for purpose; solvent extracted products made with class 3 or other solvents used are not to exceed 0.5% residual solvent by weight or 500 parts per million (PPM) per one gram of solvent based product and are to be tested.	-	-	-	-	-
e. Any other QA/QC methods is proven to be fit for purpose.	-	-	-	-	-
32. Laboratory notebooks.	-	-	-	-	-
a. Legible and in ink (or computerized system).	-	-	-	-	-
b. Signed and dated.	-	-	-	-	-
c. Changes initialed and dated.	-	-	-	-	-
d. Periodically reviewed and signed by a management representative.	-	-	-	-	-
33. Preventive/corrective action.	-	-	-	-	-
The laboratory shall have a process in place to document quality affecting preventive/corrective actions through resolution.	-	-	-	-	-
34. Periodic management review.	-	-	-	-	-
Laboratory management shall periodically review its quality system and associated procedures to evaluate continued adequacy. This review shall be documented.	-	-	-	-	-

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-104 Marijuana processor license extraction requirements. (1) Processors are limited to certain methods, equipment, solvents, gases and mediums when creating marijuana extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human health-related toxicity approved by the board. These solvents must be of at least ninety-nine percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

(3) Processors may use a professional grade closed loop CO₂ gas extraction system where every vessel is rated to a minimum of ~~((nine))~~ six hundred pounds per square inch. The CO₂ must be of at least ninety-nine percent purity.

(4) Certification from a licensed engineer must be provided to the liquor control board for professional grade closed loop systems used by processors ~~((must be))~~ to certify that the system was commercially manufactured, safe for its intended use, and built to codes of recognized and generally accepted good engineering practices, such as:

- (a) The American Society of Mechanical Engineers (ASME);
- (b) American National Standards Institute (ANSI);
- (c) Underwriters Laboratories (UL); or
- (d) The American Society for Testing and Materials (ASTM).

(5) Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

- (a) Title 296 WAC;
- (b) National Fire Protection Association (NFPA) standards;
- (c) International Building Code (IBC);
- (d) International Fire Code (IFC); and
- (e) Other applicable standards including following all applicable fire, safety, and building codes in processing and the handling and storage of the solvent or gas.

(6) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

(7) Under WAC 314-55-077, infused dairy butter and oils or fats derived from natural sources may be used to prepare infused edible products, but they may not be prepared as stand-alone edible products for sale.

(8) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts. All ethanol must be removed from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

~~((8))~~ (9) Processors creating marijuana extracts must develop standard operating procedures, good manufacturing

practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

~~((9))~~ (10) Parts per million for one gram of finished extract cannot exceed 500 parts per million or residual solvent or gas when quality assurance tested per RCW 69.50.348.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

WAC 314-55-105 Packaging and labeling requirements. (1) All usable marijuana and marijuana-infused products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(2) Any container or packaging containing usable marijuana, marijuana concentrates, or marijuana-infused products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product.

(3) Upon the request of a retail customer, a retailer must disclose the name of the accredited third-party testing lab and results of the required quality assurance test for any usable marijuana, marijuana concentrate, or ~~((either))~~ marijuana-infused product the customer is considering purchasing.

(4) Usable marijuana, marijuana concentrates, and marijuana-infused products may not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(5) The accredited third-party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.

(6) A marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:

- (a) Lot number;
- (b) UBI number of the producer; and
- (c) Weight of the product.

(7) Marijuana-infused products and marijuana concentrates meant to be eaten, swallowed, or inhaled, must be packaged in child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act or use standards specified in this subsection. Marijuana-infused product in solid or liquid form may be packaged in plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure. Marijuana-infused product in liquid form may also be sealed using a metal crown cork style bottle cap.

Marijuana-infused solid edible products. If there is more than one serving in the package, each serving must be packaged individually in childproof packaging (see WAC 314-55-105(7)) and placed in the outer package.

Marijuana-infused liquid edible products. If there is more than one serving in the package, a measuring device must be included in the package with the product.

(8) A processor may provide a retailer free samples of usable marijuana packaged in a sample jar protected by a plastic or metal mesh screen to allow customers to smell the product before purchase. The sample jar may not contain more than three and one-half grams of usable marijuana. The sample jar and the usable marijuana within may not be sold to a customer and must be returned to the licensed processor who provided the usable marijuana and sample jar.

(9) A producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the usable marijuana.

(10) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

(11) **All usable marijuana when sold at retail must include accompanying material that contains the following warnings that state:**

(a) "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health";

(b) "There may be health risks associated with consumption of this product";

(c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.

(12) **All marijuana concentrates and marijuana-infused products sold at retail must include accompanying material that contains the following warnings that state:**

(a) "There may be health risks associated with consumption of this product";

(b) "This product is infused with marijuana or active compounds of marijuana";

(c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Products containing marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours";

(g) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to the infused product; and

(h) Statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.

(13) **Labels affixed to the container or package containing usable marijuana sold at retail must include:**

(a) The business or trade name and Washington state unified business identifier number of the licensees that pro-

duced, processed(;) and sold the usable marijuana. The marijuana retail licensee trade name and Washington state unified business identifier number may be in the form of a sticker placed on the label;

(b) ~~(Lot number)~~ Inventory ID number assigned by the liquor control board's traceability system. This must be the same number that appears on the transport manifest;

(c) Concentration of THC, ~~((THCA,))~~ (total THC and activated THC-A), and CBD(, including a total of active cannabinoids (potency profile));

(d) Net weight in ounces and grams or volume as appropriate;

(e) Warnings that state: "This product has intoxicating effects and may be habit forming";

(f) Statement that "This product may be unlawful outside of Washington state";

(g) Date of harvest; and

(h) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(14) **Sample label mock up for a container or package containing usable marijuana sold at retail with required information:**

((

Lot#: 1423
Date of Harvest: 4-14

The Best Resins
Blueberry haze
16.7% THC 1.5% CBD

Warning – This product has intoxicating effect and may be habit forming

THIS PRODUCT IS UNLAWFUL OUTSIDE WASHINGTON STATE

Net weight: 7 grams

))

UBI12345678900100001	Lot # 12345
	Date of Harvest 00/00/00
The Best Resins	
Blueberry haze	
16.7% THC 1.5% CBD	
Total Active Cannabinoids 18.2%	
Warning – This product has intoxicating effects and may be habit forming	
THIS PRODUCT MAY BE UNLAWFUL OUTSIDE WASHINGTON	
Net weight 7g (.2469 oz)	

(15) Labels affixed to the container or package containing marijuana-infused products sold at retail must include:

(a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed and sold the ~~(usable)~~ marijuana. The marijuana retail licensee trade name and Washington state unified business identifier number may be in the form of a sticker placed on the label;

~~(b)~~ (Lot numbers of all base marijuana used to create the extract;

~~(c)~~ Batch number;

~~(d)~~ Inventory ID number assigned by the liquor control board's traceability system. This must be the same number that appears on the transport manifest;

~~(e)~~ Date manufactured;

~~(f)~~ (d) Best by date;

~~(g)~~ (e) Products meant to be eaten or swallowed, recommended serving size and the number of servings contained within the unit, including total milligrams of active tetrahydrocannabinol (THC), or Delta 9;

~~(h)~~ (f) Net weight in ounces and grams, or volume as appropriate;

~~(i)~~ (g) List of all ingredients and ~~(any)~~ major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;

~~(j)~~ (h) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours.";

~~(k)~~ (i) If a marijuana extract was added to the product, disclosure of the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract;

~~(l)~~ (j) Warnings that state: "This product has intoxicating effects and may be habit forming";

~~(m)~~ (k) Statement that "This product may be unlawful outside of Washington state";

~~(m)~~ (l) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

(16) Sample label mock up (front and back) for a container or package containing marijuana-infused products sold at retail with required information:

(Front of label)

((

UBI: 1234567890010001	Batch#: 5463
<i>The Best Resins</i>	
<i>Space cake</i>	
CAUTION: when eaten the effects of this product can be delayed by as much as two hours.	
Net weight: 6oz (128grams)	
<u>THIS PRODUCT IS UNLAWFUL OUTSIDE WASHINGTON STATE</u>	

))

UBI12345678900100001	Batch #12345
Processor Trade name	
The Best Resins	
Space Cake	
Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours.	
16.7% THC 1.5% CBD	
Total active cannabinoids 18.2%	
Net weight 128g (6 oz)	
THIS PRODUCT MAY BE UNLAWFUL OUTSIDE WASHINGTON	

(Back of label)

((

Manufactured at: 111 Old Hwy Rd., Mytown, WA on 1/14/14 Best by 2/1/14

INGREDIENTS: Flour, Butter, Canola oil, Sugar, Chocolate, Marijuana, Strawberries,
CONTAINS ALLERGENS: Milk, Wheat,

Serving size: 10 MG of THC

This product contains 10 servings and a total of 100 MG of THC

Warning- This product has intoxicating effects and may be habit forming

))

Manufactured at: 111 Old Hwy Rd, Maytown, WA on 00/00/00 Best by: 00/00/00

Ingredients: Flour, Butter, Canola oil, Sugar, Chocolate, Marijuana, Milk

Contains: Wheat, Milk

Serving size: 6 ounces / 10 mg of THC

This package contains 10 servings / 100 mg THC

Warning: This product has intoxicating effects and may be habit forming.

This product contains marijuana.

Marijuana extracts contained in this product were made using a CO2 extraction process

(b) Inventory ID number assigned by the liquor control board traceability system. This must be the same number that appears on the transportation manifest;

(c) Date manufactured;

(d) Best by date;

(e) Net weight in ounces and grams, or volume as appropriate;

(f) If a marijuana extract was added to the product, disclosure of the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract;

(g) Concentration of THC (total Delta 9 and Delta 9 THC-A) and CBD;

(h) Warnings that state "This product has intoxicating effects and may be habit forming";

(i) Statement that "This product may be unlawful outside Washington state"; and

(j) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-135 Discontinue marijuana sales. (1)

Notification: You must notify the board's enforcement and education division in writing if you plan to stop doing business for more than thirty days, or if you plan to permanently discontinue marijuana sales.

(2) Discontinued business: Sale of marijuana inventory and stock after discontinuance of business. Notwithstanding any other provision of Title 69 RCW or 314 WAC, a producer, processor or retail licensee who permanently discontinues business for any reason shall dispose of the salable inventory and remaining stock to a board approved licensed business at fair market value. Sales below cost are prohibited. The board shall require tax expressed as a percent of the total price of the gross sales as reported on the profit and loss statement in the last published monthly report of the board. In the event of remaining inventory after sale, the licensee shall notify the enforcement and education division of the liquor control board. The enforcement division will establish conditions for destruction or arrange for the removal of product.

(3) Assumptions: Assumption of license and purchases by licensee of certain marijuana inventory and stock. In the case of a sale of business with a licensee, after obtaining the approval of the board and under the supervision of a representative of the board, the licensee may sell the entire inventory at a negotiated fair market price. Sales below cost are prohibited.

(4) Evictions. You must notify the board's enforcement and education division immediately in writing upon notice of eviction from a licensed premises. Conditions to temporarily relocate and secure inventory will be established by the board.

(5) Abandoned marijuana inventory or product. In the event a licensee abandons any marijuana on the premises, the property owner or their designated representative should notify the enforcement and education division of the liquor control board. The enforcement division will work with the property owner to arrange for the removal and/or destruction

(17) Labels affixed to the container or package containing marijuana concentrates sold at retail must include:

(a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed and sold the marijuana concentrate. The marijuana retail licensee trade name and Washington state unified business identifier may be in the form of a sticker placed on the label;

of product. Any sales or distribution of marijuana by an unlicensed person is subject to the criminal provisions of Title 69 RCW.

AMENDATORY SECTION (Amending WSR 14-07-116, filed 3/19/14, effective 4/19/14)

WAC 314-55-210 Will the liquor control board seize or confiscate marijuana, usable marijuana, and marijuana-infused products? The liquor control board may seize or confiscate or place an administrative hold on marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products under the following circumstances:

(1) During an unannounced or announced administrative search or inspection of a licensed location, or vehicle involved in the transportation of marijuana products, where any product was found to be in excess of product limitations set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

(2) Any product not properly logged in inventory records or untraceable product required to be in the traceability system.

(3) Marijuana, usable marijuana, and marijuana-infused product that are altered or not properly packaged and labeled in accordance with WAC 314-55-105.

(4) During a criminal investigation, officers shall follow seizure laws detailed in RCW 69.50.505 and any other applicable criminal codes.

(5) Liquor control board officers may order an administrative hold of marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products to prevent destruction of evidence, diversion or other threats to public safety, while permitting a licensee to retain its inventory pending further investigation, pursuant to the following procedure:

(a) If during an investigation or inspection of a licensee, a liquor control board officer develops reasonable grounds to believe certain marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products constitute evidence of acts in violation of the state laws or rules, or otherwise constitute a threat to public safety, the liquor control board officer may issue a notice of administrative hold of any such marijuana, usable marijuana, marijuana concentrate, or marijuana-infused products. The notice of administrative hold shall provide a documented description of the marijuana, usable marijuana, marijuana concentrate, or marijuana-infused products to be subject to the administrative hold.

(b) The licensee shall completely and physically segregate the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products subject to the administrative hold in a limited access area of the licensed premises under investigation, where it shall be safeguarded by the licensee. Pending the outcome of the investigation and any related disciplinary proceeding, the licensee is prohibited from selling, giving away, transferring, transporting, or destroying the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products subject to the administrative hold.

(c) Nothing herein shall prevent a licensee from the continued cultivation or harvesting of the marijuana subject to the administrative hold. All marijuana, usable marijuana,

marijuana concentrate, and marijuana-infused products subject to the administrative hold must be put into separate harvest batches from product not subject to the administrative hold.

(d) Following an investigation, the liquor control board may lift the administrative hold, order the continuation of the administrative hold, or seek a final agency order for the destruction of the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-510 What options does a licensee have once he/she receives a notice of an administrative violation? (1) A licensee has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

(2) What happens if a licensee does not respond to the administrative violation notice within twenty days?

(a) If a licensee does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(3) What are the procedures when a licensee requests a settlement conference?

(a) If the licensee requests a settlement conference, the hearing examiner or designee will contact the licensee to discuss the violation.

(b) Both the licensee and the hearing examiner or designee will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or designee will prepare a compromise settlement agreement. The hearing examiner or designee will forward the compromise settlement agreement, authorized by both parties, to the board, or designee, for approval.

(i) If the board, or designee, approves the compromise, a copy of the signed settlement agreement will be sent to the licensee and will become part of the licensing history.

(ii) If the board, or designee, does not approve the compromise, the licensee will be notified of the decision. The licensee will be given the option to renegotiate with the hearings examiner or designee, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee and the hearing examiner or designee cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or designee will forward a request for an administrative hearing to the board's hearings coordinator.

(4) What is the process for nonpayment of monetary penalty?

(a) When a licensee fails to submit payment of monetary fine proceeding provisions to collect shall take effect immediately or other action such as revocation will be instituted as deemed appropriate by the board.

(b) An attempt to advise the debtor of the existence of the debt, and twenty-five percent late fee per subsection (2)(b) of this section will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least thirty days have elapsed from the time notice was attempted.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-515 What are the penalties if a marijuana license holder violates a marijuana law or rule? (1) The purpose of WAC 314-55-515 through 314-55-540 is to outline what penalty a marijuana licensee can expect if a licensee or employee violates a liquor control board law or rule. (WAC rules listed in the categories provide reference areas, and may not be all inclusive. Any violation not listed in WAC 314-55-515 through 314-55-540 will be assessed following penalty progression of the license type group associated with the class of license.)

(2) Penalties for violations by marijuana licensees or employees are broken down into four categories:

(a) Group One—Public safety violations, WAC 314-55-520.

(b) Group Two—Regulatory violations, WAC 314-55-525.

(c) Group Three—License violations, WAC 314-55-530.

(d) Group Four—Producer violations involving the manufacture, supply, and/or distribution of marijuana by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-55-535.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-520 Group 1 violations against public safety. Group 1 violations are considered the most serious because they present a direct threat to public safety. Based on chapter 69.50 RCW, some violations have only a monetary option. Some violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-55-515(4).

(3) For the purposes of chapter 314-55 WAC, a three-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor control board may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension, or alternate penalty, during a settlement conference as outlined in WAC 314-55-510(3).

(a) Mitigating circumstances	(b) Aggravating circumstances
Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations.	Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of marijuana license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.
Examples include:	Examples include:
<ul style="list-style-type: none"> • Having a signed acknowledgment of the business' responsible handling and sales policies on file for each employee; • Having an employee training plan that includes annual training on marijuana laws. 	<ul style="list-style-type: none"> • Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor control board officer, or when people have sustained injuries.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
((Violations involving minors:	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license))	
Sale or service to minor: Sale of marijuana and/or paraphernalia to a person under twenty-one years of age. WAC 314-55-079 RCW 69.50.4015	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
<u>RCW 69.50.401</u> <u>RCW 69.50.406</u> <u>RCW 69.50.412</u>				
Allowing a minor to frequent a restricted area. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	<u>\$1,000 monetary fine</u>
Employee under legal age. RCW 69.50.357 <u>RCW 69.50.331(6)</u>	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
Licensee and/or employee open and/or consuming marijuana on a retail licensed premises. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
Conduct violations: Criminal conduct: Permitting or engaging in criminal conduct.	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Using unauthorized pesticides, soil amendments, fertilizers, other crop production aids. ((WAC 314-55-020(8) WAC 314-55-083(4)) <u>WAC 314-55-084</u> WAC 314-55-087 (1)(f)	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Adulterate usable marijuana with organic or non-organic chemical or other compound. WAC 314-55-105(((8)))	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Using unauthorized solvents or gases in processing. WAC 314-55-104	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. WAC 314-55-050 <u>WAC 314-55-077</u>	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
Marijuana purchased from an unauthorized source. <u>RCW 69.50.360</u> <u>RCW 69.50.363</u>	Cancellation of license			

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Marijuana sold to an unauthorized source. <u>RCW 69.50.363</u> <u>RCW 69.50.366</u> <u>RCW 69.50.401</u>	Cancellation of license			
Sales in excess of transaction limitations. WAC 314-55-095(3) <u>RCW 69.50.360</u>	Cancellation of license			

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-525 Group 2 regulatory violations. Group 2 violations are violations involving general regulation and administration of retail or nonretail licenses.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Hours of service: Sales of marijuana between 12:00 a.m. and 8:00 a.m. <u>WAC 314-55-147</u>	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Advertising: Violations (statements/illustrations). WAC 314-55-155(2)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Advertising violations - Sign exceeding 1600 square inches; within 1000 feet of prohibited areas; on or in public transit vehicles, shelters, or publicly owned or operated property. RCW 69.50.357 RCW 69.50.369 <u>WAC 314-55-155(1)</u>	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
Packaging and/or labeling violations (processor/retailer). WAC 314-55-105	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Licensee/employee failing to display required security badge. WAC 314-55-083(1)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Records: Improper recordkeeping. WAC 314-55-087 WAC 314-55-089 ((3), (4), and (5))	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to submit monthly tax reports and/or payments. WAC 314-55-089 WAC 314-55-092 <u>RCW 69.50.535</u>	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Signs: Failure to post required signs. WAC 314-55-086 <u>RCW 69.50.331(5)</u>	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to utilize and/or maintain traceability (processor or retail licensee). WAC 314-55-083(4)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Exceeding maximum serving requirements for marijuana-infused products. WAC 314-55-095(2)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure for a processor to meet marijuana waste disposal requirements. WAC 314-55-097	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain standardized scale requirements (processor (retailer)). WAC 314-55-099	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
<u>Failure to follow and maintain food processing facility requirements.</u> <u>WAC 314-55-077</u>	<u>5-day suspension or \$500 monetary option</u>	<u>10-day suspension or \$2,500 monetary option</u>	<u>30-day suspension</u>	<u>Cancellation of license</u>
Marijuana processor extraction requirements. WAC 314-55-104	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Retail outlet selling unauthorized products. RCW 69.50.357 RCW 69.50.4121	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
Retailer displaying products in a manner visible to the general public from a public right of way. RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
<u>Sale of Marijuana .</u> <u>Violations by retailer</u> <u>involving sales, deliv-</u> <u>ery, inventory, and</u> <u>returns.</u> WAC 314-55-079 WAC 314-55-070 (6)	<u>5-day suspension or</u> <u>\$500 monetary option</u>	<u>10-day suspension or</u> <u>\$2,500 monetary</u> <u>option</u>	<u>30-day suspension</u>	<u>Cancellation of license</u>

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-530 Group 3 license violations. Group 3 violations are violations involving licensing requirements, license classification, and special restrictions.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
True party of interest violation. WAC 314-55-035	Cancellation of license			
Failure to furnish required documents. WAC 314-55-050	Cancellation of license			
Misrepresentation of fact. WAC 314-55-050	Cancellation of license			
Operating plan: Violations of a board-approved operating plan. WAC 314-55-020	5-day suspension or \$500 monetary option	10-day suspension or \$1,500 monetary option	30-day suspension	Cancellation of license
Failing to gain board approval for changes in existing ownership. WAC 314-55-120 <u>RCW 69.50.339</u>	30-day suspension	Cancellation of license		
Failure to maintain required insurance. WAC ((314-55-080)) <u>314-55-082</u>	30-day suspension	Cancellation of license		

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-535 Group 4 marijuana producer violations. Group 4 violations are violations involving the manufacture, supply, and/or distribution of marijuana by marijuana producer licensees and prohibited practices between a marijuana producer licensee and a marijuana retailer licensee.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Unauthorized sale to a retail licensee. WAC 314-55-075 <u>RCW 69.50.366</u> <u>RCW 69.50.401</u>	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to utilize and/or maintain traceability. WAC 314-55-083(4)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Packaging and/or labeling violations (producer). WAC 314-55-105	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Unauthorized product/unapproved storage or delivery. <u>RCW 69.50.366</u> <u>RCW 69.50.401</u>	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure for a producer to meet marijuana waste disposal requirements. WAC 314-55-097	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Records: Improper recordkeeping. WAC 314-55-087 WAC 314-55-089 (((2) and (4) WAC 314-55-092))	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain standardized scale requirements (producer). WAC 314-55-099	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
<p><u>((Violation:)) Failure to submit monthly tax reports and/or payments.</u> <u>WAC 314-55-089</u> <u>WAC 314-55-092</u></p>	<p><u>\$2,500 monetary fine</u></p>	<p><u>\$5,000 monetary fine and destruction of 25% of harvestable plants</u></p>	<p><u>\$15,000 monetary fine and destruction of 50% of harvestable plants</u></p>	<p><u>Cancellation of license</u></p>
<p><u>Sale or service to minor:</u> Sale of marijuana and/or paraphernalia to a person under twenty-one years of age. <u>WAC 314-55-079</u> <u>RCW 69.50.4015</u> <u>RCW 69.50.401</u> <u>RCW 69.50.406</u> <u>RCW 69.50.412</u></p>	<p><u>\$2,500 monetary fine</u></p>	<p><u>\$5,000 monetary fine and destruction of 25% of harvestable plants</u></p>	<p><u>\$15,000 monetary fine and destruction of 50% of harvestable plants</u></p>	<p><u>Cancellation of license</u></p>
<p><u>Conduct violations:</u> <u>Criminal conduct:</u> <u>Permitting or engaging in criminal conduct.</u></p>	<p><u>\$2,500 monetary fine</u></p>	<p><u>\$5,000 monetary fine and destruction of 25% of harvestable plants</u></p>	<p><u>\$15,000 monetary fine and destruction of 50% of harvestable plants</u></p>	<p><u>Cancellation of license</u></p>
<p><u>Using unauthorized pesticides, soil amendments, fertilizers, other crop production aids.</u> <u>WAC 314-55-084</u> <u>WAC 314-55-087</u> <u>(1)(f)</u></p>	<p><u>\$2,500 monetary fine</u></p>	<p><u>\$5,000 monetary fine and destruction of 25% of harvestable plants</u></p>	<p><u>\$15,000 monetary fine and destruction of 50% of harvestable plants</u></p>	<p><u>Cancellation of license</u></p>
<p><u>Adulterate usable marijuana with organic or nonorganic chemical or other compound.</u> <u>WAC 314-55-105</u></p>	<p><u>\$2,500 monetary fine</u></p>	<p><u>\$5,000 monetary fine and destruction of 25% of harvestable plants</u></p>	<p><u>\$15,000 monetary fine and destruction of 50% of harvestable plants</u></p>	<p><u>Cancellation of license</u></p>
<p><u>Using unauthorized solvents or gases in processing.</u> <u>WAC 314-55-104</u></p>	<p><u>\$2,500 monetary fine</u></p>	<p><u>\$5,000 monetary fine and destruction of 25% of harvestable plants</u></p>	<p><u>\$15,000 monetary fine and destruction of 50% of harvestable plants</u></p>	<p><u>Cancellation of license</u></p>
<p><u>Refusal</u> to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. <u>WAC 314-55-050</u> <u>WAC 314-55-077</u></p>	<p><u>\$2,500 monetary fine</u></p>	<p><u>\$5,000 monetary fine and destruction of 25% of harvestable plants</u></p>	<p><u>\$15,000 monetary fine and destruction of 50% of harvestable plants</u></p>	<p><u>Cancellation of license</u></p>
<p><u>Marijuana purchased from an unauthorized source.</u> <u>RCW 69.50.360</u> <u>RCW 69.50.363</u></p>	<p><u>\$2,500 monetary fine</u></p>	<p><u>\$5,000 monetary fine and destruction of 25% of harvestable plants</u></p>	<p><u>\$15,000 monetary fine and destruction of 50% of harvestable plants</u></p>	<p><u>Cancellation of license</u></p>

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
<u>Marijuana sold to an unauthorized source.</u> RCW 69.50.363 RCW 69.50.366 RCW 69.50.401	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Sales in excess of transaction limitations.</u> WAC 314-55-095(3) RCW 69.50.360	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Advertising:</u> Violations (statements/illustrations). WAC 314-55-155(2)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Packaging and/or labeling violations (producer/processor).</u> WAC 314-55-105	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Licensee/employee failing to display required security badge.</u> WAC 314-55-083(1)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Failure to maintain required security alarm and surveillance systems.</u> WAC 314-55-083 (2) and (3)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Records:</u> Improper recordkeeping. WAC 314-55-087 WAC 314-55-089	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Signs:</u> Failure to post required signs. WAC 314-55-086 RCW 69.50.331(5)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Violation of transportation requirements.</u> WAC 314-55-085	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Exceeding maximum serving requirements for marijuana-infused products.</u> WAC 314-55-095(2)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Failure to maintain standardized scale requirements (producer/processor).</u> WAC 314-55-099	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
<u>Marijuana processor extraction requirements.</u> WAC 314-55-104	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Operating plan: Violations of a board-approved operating plan.</u> WAC 314-55-020	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Failing to gain board approval for changes in existing ownership.</u> WAC 314-55-120 RCW 69.50.339	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<u>Failure to maintain required insurance.</u> WAC 314-55-082	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license

**WSR 15-08-055
PROPOSED RULES
HEALTH CARE AUTHORITY**

(Washington Apple Health)
[Filed March 27, 2015, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-040.

Title of Rule and Other Identifying Information: WAC 182-550-4650 "Full cost" public hospital certified public expenditure (CPE) payment program, 182-550-4670 CPE payment program—"Hold harmless" provision, and 182-550-5400 Payment method—Public hospital disproportionate share hospital (PHDSH).

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room, 106B, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on May 5, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 6, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on May 5, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 27, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to these sections are necessary to align with recent changes to RCW

74.09.5225(3) and to allow certain public hospitals to opt-out of the agency's CPE payment program.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 74.09.5225(3).

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Barcus, P.O. 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Tracy Sayre, P.O. Box 45076, Olympia, WA 98504-5076, (360) 725-1835.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

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.

March 27, 2015
Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-04-022, filed 1/25/12, effective 2/25/12)

WAC 182-550-4650 "Full cost" public hospital certified public expenditure (CPE) payment program. (1) The medicaid agency's "full cost" public hospital certified public expenditure (CPE) inpatient payment program provides payments to participating government-operated hospitals based on the "full cost" of covered medically necessary services and

requires the expenditure of local funds in lieu of state funds to qualify for federal matching funds. The agency's inpatient payments to participating hospitals equal the federal matching amount for allowable costs. The agency uses the ratio of costs-to-charges (RCC) method described in WAC 182-550-4500 to determine "full cost."

(2) ~~((Only the following facilities are reimbursed through))~~ To be eligible for the "full cost" public hospital CPE payment program, the hospital must be:

(a) ~~((Public hospitals located in the state of Washington that are:~~

~~((i))~~ Operated by a public hospital district ~~((s; and~~
~~((ii))~~ in the state of Washington, not certified by the department of health (DOH) as a critical access hospital, and has not chosen to opt-out of the CPE payment program as allowed in subsection (6) of this section;

(b) Harborview Medical Center; ~~((and))~~ or

(c) University of Washington Medical Center.

(3) Payments made under the inpatient CPE payment program are limited to medically necessary services provided to medical assistance clients eligible for inpatient hospital services.

(4) Each hospital described in subsection (2) of this section is responsible to provide certified public expenditures as the required state match for claiming federal medicaid funds.

(5) The agency determines the ~~((actual))~~ initial payment for inpatient hospital services under the CPE payment program by:

(a) Multiplying the hospital's medicaid RCC by the covered charges (to determine allowable costs), then;

(b) Subtracting the client's responsibility and any third party liability (TPL) from the amount derived in (a) of this subsection, then;

(c) Multiplying the state's federal medical assistance percentage (FMAP) by the amount derived in (b) of this subsection.

(6) A hospital may opt-out of the inpatient CPE payment program if the hospital:

(a) Meets the criteria for the inpatient rate enhancement under WAC 182-550-3830(6); or

(b) Is not eligible for public hospital disproportionate share hospital (PHDSH) payments under WAC 182-550-5400.

(7) To opt-out of the inpatient CPE payment program, the hospital must submit a written request to opt-out to the agency's chief financial officer by July 1st in order to be effective for January 1st of the following year.

(8) Hospitals participating in the inpatient CPE payment program must complete the applicable CPE medicaid cost reports as described in WAC 182-550-5410 for the inpatient fee-for-service cost settlements.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-4670 CPE payment program—"Hold harmless" provision. To meet legislative requirements, the ~~((department))~~ medicaid agency includes a "hold harmless" provision for eligible hospitals ~~((providers eligible for the))~~ participating in certified public expenditure (CPE) payment

programs under WAC 182-550-4650 and 182-550-5400. Under the provision and subject to legislative directives and appropriations, hospitals eligible for payments under ~~((the))~~ CPE payment programs will receive no less in combined state and federal payments than they would have received under the methodologies otherwise in effect as described in this section. All hospital submissions pertaining to ~~((the))~~ CPE payment programs, including but not limited to cost report schedules, are subject to audit at any time by the ~~((department))~~ agency or its designee.

(1) The ~~((department))~~ agency:

(a) Uses historical cost and payment data trended forward to calculate prospective hold harmless grant payment amounts for the current state fiscal year (SFY); and

(b) Reconciles these hold harmless grant payment amounts when the actual claims data are available for the current fiscal year.

(2) For SFYs 2006 through 2009, the ~~((department))~~ agency calculates what the hospital would have been paid under the methodologies otherwise in effect for the SFY as the sum of:

(a) The total payments for inpatient claims for patients admitted during the fiscal year, calculated by repricing the claims using:

(i) For SFYs 2006 and 2007, the inpatient payment method in effect during SFY 2005; or

(ii) For SFYs 2008 and 2009, the payment method that would otherwise be in effect during the CPE payment program year if the CPE payment program had not been enacted.

(b) The total net disproportionate share hospital and state grant payments paid for SFY 2005.

(3) For SFY 2010 and beyond, the ~~((department))~~ agency calculates what the hospital would have been paid under the methodologies otherwise in effect for the SFY as the sum of:

(a) The total of the inpatient claim payment amounts that would have been paid during the SFY had the hospital not been in the CPE payment program;

(b) One-half of the indigent assistance disproportionate share hospital payment amounts paid to and retained by each hospital during SFY 2005; and

(c) All of the other disproportionate share hospital payment amounts paid to and retained by each hospital during SFY 2005 to the extent the same disproportionate share hospital programs exist in the 2009-2011 biennium.

(4) For each SFY, the ~~((department))~~ agency determines total state and federal payments made under the programs, including:

(a) Inpatient claim payments;

(b) Disproportionate share hospital (DSH) payments; and

(c) Supplemental upper payment limit payments, as applicable.

(5) A hospital may receive a hold harmless grant, subject to legislative directives and appropriations, when the following calculation results in a positive number:

(a) For SFY 2006 through SFY 2009, the amount derived in subsection (4) of this section is subtracted from the amount derived in subsection (2) of this section; or

(b) For SFY 2010 and beyond, the amount derived in subsection (4) of this section is subtracted from the amount derived in subsection (3) of this section.

(6) The ~~((department))~~ agency calculates interim hold harmless and final hold harmless grant amounts as follows:

(a) An interim hold harmless grant amount is calculated approximately ten months after the end of the SFY to include the paid claims for the same SFY admissions. Claims are subject to utilization review prior to the interim hold harmless calculation. Prospective grant payments made under subsection (1) of this section are deducted from the calculated interim hold harmless grant amount to determine the net grant payment amount due to or due from the hospital.

(b) The final hold harmless grant amount is calculated at such time as the final allowable federal portions of program payments are determined. The procedure is the same as the interim grant calculation but it includes all additional claims that have been paid or adjusted since the interim hold harmless calculation. Claims are subject to utilization review and audit prior to the final calculation of the hold harmless amount. Interim grant payments determined under (a) of this subsection are deducted from this final calculation to determine the net final hold harmless amount due to or due from the hospital.

AMENDATORY SECTION (Amending WSR 12-04-022, filed 1/25/12, effective 2/25/12)

WAC 182-550-5400 Payment method—Public hospital disproportionate share hospital (PHDSH). (1) The medicaid agency's public hospital disproportionate share hospital (PHDSH) program is a certified public expenditure program for government-operated hospitals. To be eligible for PHDSH, a hospital must qualify for disproportionate share hospital (DSH) payments under WAC 182-550-4900 and be:

(a) ~~((Public hospitals located in the state of Washington that are:~~

~~(i)) Operated by a public hospital district(~~(=and~~~~

~~(ii) Not certified by the department of health (DOH) as a critical access hospital)) in the state of Washington and participating in the "full cost" public hospital certified public expenditure (CPE) payment program described in WAC 182-550-4650;~~

~~(b) Harborview Medical Center; (~~and~~) or~~

~~(c) University of Washington Medical Center.~~

(2) The PHDSH payments to a hospital eligible under this program may not exceed the hospital's disproportionate share hospital (DSH) cap calculated according to WAC 182-550-4900(10). The hospital receives only the federal medical assistance percentage of the total computable payment amount.

(3) Hospitals receiving payment under the PHDSH program must provide the local match for the federal funds through certified public expenditures (CPE). Payments are limited to costs incurred by the participating hospitals.

(4) A hospital receiving payment under the PHDSH program must submit to the agency federally required medicaid cost report schedules apportioning inpatient and outpatient costs, beginning with the services provided during state fiscal year 2006. See WAC 182-550-5410.

(5) PHDSH payments are subject to the availability of DSH funds under the statewide DSH cap. If the statewide DSH cap is exceeded, the agency will recoup PHDSH payments first, but only from hospitals that received total inpatient and DSH payments above the hold harmless level, and only to the extent of the excess amount above the hold harmless level. See WAC 182-550-4900 (13) and (14), and 182-550-4670.

WSR 15-08-057

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed March 27, 2015, 10:38 a.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 182-548-1000 Federally qualified health center—Purpose, 182-548-1100 Federally qualified health center—Definitions, 182-548-1200 Federally qualified health center—Enrollment, 182-548-1300 Federally qualified health center—Services, 182-548-1400 Federally qualified health center—Reimbursement and limitations, 182-549-1000 Rural health clinic—Purpose, 182-549-1100 Rural health clinic—Definitions, 182-549-1200 Rural health clinic—Enrollment, 182-549-1300 Rural health clinic—Services, and 182-549-1400 Rural health clinic—Reimbursement and limitations.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room, CSP 106B, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on May 5, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 6, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on May 5, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 27, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is making routine housekeeping changes to these rules to replace outdated references to DSHS, and to update invalid WAC references to Title 388 WAC.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Chantelle Diaz, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative [rules] review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

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.

March 27, 2015
Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-548-1000 Federally qualified health centers—Purpose. This chapter establishes the ~~((department's))~~ medicaid agency's:

(1) Requirements for enrollment as a federally qualified health center (FQHC) provider; and

(2) Reimbursement methodology for services provided by an FQHC~~((s))~~ to a Washington apple health client~~((s of medical assistance))~~.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-548-1100 Federally qualified health centers—Definitions. This section contains definitions of words or phrases that apply to this chapter. Unless defined in this chapter or chapter 182-500 WAC ~~((388-500-0005))~~, the definitions found in the Webster's New World Dictionary apply.

"APM index" - The alternative payment methodology (APM) is used to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified health center (FQHC) and rural health clinic (RHC) providers. The index is derived from the federal medicare economic index (MEI) and Washington-specific variable measures.

"Base year" - The year that is used as the benchmark in measuring a center's total reasonable costs for establishing base encounter rates.

"Cost report" - A statement of costs and provider utilization that occurred during the time period covered by the cost report. FQHCs must complete a cost report when there is a change in scope, rebasing of the encounter rate, or when the ~~((department))~~ medicaid agency sets a base rate.

"Encounter" - A face-to-face visit between a client and a FQHC provider (e.g., a physician, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

"Encounter rate" - A cost-based, facility-specific rate for covered FQHC services, paid to an FQHC for each valid encounter it bills.

"Enhancements (also called managed care enhancements)" - A monthly amount paid by the ~~((department))~~ agency to FQHCs for each client enrolled with a managed care organization (MCO). MCOs may contract with FQHCs to provide services under managed care programs. FQHCs receive enhancements from the ~~((department))~~ agency in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.

"Federally qualified health center (FQHC)" - An entity that has entered into an agreement with the Centers for Medicare and Medicaid Services (CMS) to meet medicare program requirements under 42 C.F.R. 405.2434 and:

(1) Is receiving a grant under section 329, 330, or 340 of the Public Health Service (PHS) Act, or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of the Public Health Service Act;

(2) Based on the recommendation of the PHS, is determined by CMS to meet the requirements for receiving such a grant;

(3) Was treated by CMS, for purposes of part B, as a comprehensive federally funded health center (FFHC) as of January 1, 1990; or

(4) Is an outpatient health program or facility operated by a tribe or tribal organization~~((s))~~ under the Indian Self-Determination Act or by an Urban Indian organization receiving funding under Title V of the Indian Health Care Improvement Act.

"Fee-for-service" - A payment method the ~~((department))~~ agency uses to pay providers for covered medical services provided to ~~((medical assistance))~~ Washington apple health clients, except those services provided under the ~~((department's))~~ agency's prepaid managed care organizations or those services that qualify for an encounter rate.

"Interim rate" - The rate established by the ~~((department))~~ agency to pay an FQHC for covered FQHC services prior to the establishment of a permanent rate for that facility.

~~((Medical assistance - The various health care programs administered by the department that provide federal and/or state funded health care benefits to eligible clients.))~~

"Rebasing" - The process of recalculating encounter rates using actual cost report data.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-548-1200 Federally qualified health centers—Enrollment. (1) To enroll as a ~~((medical assistance))~~ Washington apple health provider and receive payment for services, a federally qualified health center (FQHC) must:

(a) Receive FQHC certification for participation in the Title XVIII (medicare) program according to 42 C.F.R. 491;

(b) Sign a core provider agreement; and

(c) Operate in accordance with applicable federal, state, and local laws.

(2) The ~~((department))~~ medicaid agency uses one of two timeliness standards for determining the effective date of a medicaid-certified FQHC.

(a) The ~~((department))~~ agency uses medicare's effective date if the FQHC returns a properly completed core provider

agreement and FQHC enrollment packet within sixty calendar days from the date of medicare's letter notifying the center of the medicare certification.

(b) The ~~((department))~~ agency uses the date the signed core provider agreement is received if the FQHC returns the properly completed core provider agreement and FQHC enrollment packet sixty-one or more calendar days after the date of medicare's letter notifying the clinic of the medicare certification.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-548-1300 Federally qualified health centers—Services. (1) The following outpatient services qualify for FQHC reimbursement:

- (a) Physician services specified in 42 C.F.R. 405.2412.
- (b) Nurse practitioner or physician assistant services specified in 42 C.F.R. 405.2414.
- (c) Clinical psychologist and clinical social worker services specified in 42 C.F.R. 405.2450.
- (d) Visiting nurse services specified in 42 C.F.R. 405.2416.
- (e) Nurse-midwife services specified in 42 C.F.R. 405.2401.
- (f) Preventive primary services specified in 42 C.F.R. 405.2448.

(2) The ~~((department))~~ medicaid agency pays for FQHC services when they are:

(a) Within the scope of an eligible client's ~~((medical assistance))~~ Washington apple health program. Refer to WAC ~~((388-501-0060))~~ 182-501-0060 scope of services; and

(b) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070.

(3) FQHC services may be provided by any of the following individuals in accordance with 42 C.F.R. 405.2446:

- (a) Physicians;
- (b) Physician assistants (PA);
- (c) Nurse practitioners (NP);
- (d) Nurse midwives or other specialized nurse practitioners;
- (e) Certified nurse midwives;
- (f) Registered nurses or licensed practical nurses; and
- (g) Psychologists or clinical social workers.

$$\text{Specific FQHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each FQHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI for primary care services, and adjusted for any increase or decrease in the FQHC's scope of services.

(5) The agency calculates the FQHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM utilizes the FQHC base encounter rates, as described in subsection (4)(b) of this section.

AMENDATORY SECTION (Amending WSR 14-14-056, filed 6/26/14, effective 8/1/14)

WAC 182-548-1400 Federally qualified health centers—Reimbursement and limitations. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for federally qualified health centers (FQHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, FQHCs have the choice to be reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM will be at least as much as payments that would have been made under the PPS.

(3) The agency calculates FQHC PPS encounter rates as follows:

(a) Until an FQHC's first audited medicaid cost report is available, the agency pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate;

(b) Upon availability of the FQHC's first audited medicaid cost report, the agency sets FQHC encounter rates at one hundred percent of its total reasonable costs as defined in the cost report. FQHCs receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then increased each January 1st by the percent change in the medicare economic index (MEI).

(4) For FQHCs in existence during calendar years 1999 and 2000, the agency sets encounter rates prospectively using a weighted average of one hundred percent of the FQHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-548-1500.

(b) PPS base encounter rates are determined using audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

(b) Base rates are adjusted to reflect any approved changes in scope of service in calendar years 2002 through 2009.

(c) The adjusted base rates are then increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency pays FQHCs for services provided during the period

beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay FQHCs at the encounter rates described in subsection (5) of this section.

(b) Each FQHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM uses each FQHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency will recoup from FQHCs any amount in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rates that the agency pays FQHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each FQHC has the choice of receiving either its PPS rate as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For FQHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For FQHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for FQHCs receiving their initial FQHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and by the cumulative percentage increase in the MEI from calendar years 2009 through 2011. The rates were increased by the MEI effective January 1, 2012, and will be increased by the MEI each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency will recoup from FQHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-022).

(d) For FQHCs that choose to be paid under the revised APM, the agency will periodically rebase the encounter rates using the FQHC cost reports and other relevant data. Rebas-ing will be done only for FQHCs that are reimbursed under the APM.

(e) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) The agency limits encounters to one per client, per day except in the following circumstances:

(a) The visits occur with different health care professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(9) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(10) Fluoride treatment and sealants must be provided on the same day as an encounter-eligible service. If provided on another day, the rules for non-FQHC services in subsection (11) of this section apply.

(11) Payments for non-FQHC services provided in an FQHC are made on a fee-for-service basis using the agency's published fee schedules. Non-FQHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(12) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.

(13) For clients enrolled with an MCO, the agency pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the agency performs an annual reconciliation of the enhancement payments. For each FQHC, the agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the FQHC has been overpaid, the agency will recoup the appropriate amount. If the FQHC has been underpaid, the agency will pay the difference.

(14) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-549-1000 Rural health clinics—Purpose. This chapter establishes the ((department's)) medicaid agency's reimbursement methodology for rural health clinic (RHC) services. RHC conditions for certification are found in 42 C.F.R. Part 491.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-549-1100 Rural health clinics—Definitions. This section contains definitions of words and phrases that apply to this chapter. Unless defined in this chapter or chapter 182-500 WAC ((388-500-0005)), the definitions found in the Webster's New World Dictionary apply.

"APM index" - The alternative payment methodology (APM) is used to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified health center (FQHC) and rural health clinic (RHC) providers.

"Base year" - The year that is used as the benchmark in measuring a clinic's total reasonable costs for establishing base encounter rates.

"Encounter" - A face-to-face visit between a client and a qualified rural health clinic (RHC) provider (e.g., a physician, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

"Encounter rate" - A cost-based, facility-specific rate for covered RHC services, paid to a rural health clinic for each valid encounter it bills.

"Enhancements(~~(u)~~) (also called managed care enhancements)" - A monthly amount paid to RHCs for each client enrolled with a managed care organization (MCO). MCOs may contract with RHCs to provide services under managed care programs. RHCs receive enhancements from the ~~((department))~~ medicaid agency in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.

"Fee-for-service" - A payment method the ~~((department))~~ agency uses to pay providers for covered medical services provided to ~~((medical assistance))~~ clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program, except those services provided under the ~~((department's))~~ agency's prepaid managed care organizations or those services that qualify for an encounter payment.

"Interim rate" - The rate established by the ~~((department))~~ agency to pay a rural health clinic for covered RHC services prior to the establishment of a permanent rate for that facility.

~~("Medical assistance" - The various health care programs administered by the department that provide federal and/or state-funded benefits to eligible clients.)~~

"Medicare cost report" - The cost report is a statement of costs and provider utilization that occurred during the time period covered by the cost report. RHCs must complete and submit a report annually to medicare.

"Mobile unit" - The objects, equipment, and supplies necessary for provision of the services furnished directly by the RHC are housed in a mobile structure.

"Permanent unit" - The objects, equipment, and supplies necessary for the provision of the services furnished directly by the ~~((clinic))~~ RHC are housed in a permanent structure.

"Rebasing" - The process of recalculating encounter rates using actual cost report data.

"Rural area" - An area that is not delineated as an urbanized area by the Bureau of the Consensus.

"Rural health clinic (RHC)" - A clinic, as defined in 42 C.F.R. 405.2401(b), that is primarily engaged in providing RHC services and is:

- Located in a rural area designated as a shortage area as defined under 42 C.F.R. 491.2;

- Certified by medicare as ~~((a))~~ an RHC in accordance with applicable federal requirements; and
- Not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

"Rural health clinic (RHC) services" - Outpatient or ambulatory care of the nature typically provided in a physician's office or outpatient clinic or similar setting, including specified types of diagnostic examination, laboratory services, and emergency treatments. The specific list of services which must be made available by the clinic can be found under 42 C.F.R. Part 491.9.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-549-1200 Rural health clinics—Enrollment. (1) To participate in the Title XIX (medicaid) program or the Title XXI (CHIP) program and receive payment for services, a rural health clinic (RHC) must:

- Receive RHC certification for participation in the Title XVIII (medicare) program according to 42 C.F.R. 491;
- Sign a core provider agreement;
- Comply with the clinical laboratory improvement amendments (CLIA) of 1988 testing for all laboratory sites per 42 C.F.R. Part 493; and
- Operate in accordance with applicable federal, state, and local laws.

(2) An RHC may be a permanent or mobile unit. If an entity owns clinics in multiple locations, each individual site must be certified by the ~~((department))~~ medicaid agency in order to receive reimbursement from the ~~((department))~~ agency as an RHC.

(3) The ~~((department))~~ agency uses one of two timeliness standards for determining the effective date of a medicaid-certified RHC.

(a) The ~~((department))~~ agency uses medicare's effective date if the RHC returns a properly completed core provider agreement and RHC enrollment packet within sixty days from the date of medicare's letter notifying the clinic of the medicare certification.

(b) The ~~((department))~~ agency uses the date the signed core provider agreement is received if the RHC returns the properly completed core provider agreement and RHC enrollment packet after sixty days of the date of medicare's letter notifying the clinic of the medicare certification.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-549-1300 Rural health clinics—Services. (1) Rural health clinic (RHC) services are defined under 42 C.F.R. 440.20(b).

(2) The ~~((department))~~ medicaid agency pays for RHC services when they are:

(a) Within the scope of ~~((an eligible))~~ a client's ~~((medical assistance program))~~ benefit package. Refer to WAC ~~((388-501-0060))~~ 182-501-0060; and

(b) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070.

(3) RHC services may be provided by any of the following individuals in accordance with 42 C.F.R. 405.2401, 491.7, and 491.8:

- (a) Physicians;
- (b) Physician assistants (PA);
- (c) Nurse practitioners (NP);
- (d) Nurse midwives or other specialized nurse practitioners;
- (e) Certified nurse midwives;
- (f) Registered nurses or licensed practical nurses; and
- (g) Psychologists or clinical social workers.

AMENDATORY SECTION (Amending WSR 12-16-060, filed 7/30/12, effective 8/30/12)

WAC 182-549-1400 Rural health clinics—Reimbursement and limitations. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for rural health clinics (RHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, RHCs have the choice to be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM will be at least as much as payments that would have been made under the PPS.

(3) The agency calculates RHC PPS encounter rates for RHC core services as follows:

$$\text{Specific RHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI and adjusted for any increase or decrease in the RHC's scope of services.

(5) The agency calculates RHC's APM encounter rates for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM utilizes the RHC base encounter rates as described in subsection (4)(b) of this section.

(b) Base rates are increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index.

(c) The result is the year 2009 APM rates for each RHC that chooses to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency pays RHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay RHCs at the encounter rate described in subsection (5) of this section.

(b) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(a) Until an RHC's first audited medicare cost report is available, the agency pays an average encounter rate of other similar RHCs (whether the RHC is classified as hospital-based or free-standing) within the state, otherwise known as an interim rate.

(b) Upon availability of the RHC's first audited medicare cost report, the agency sets RHC's encounter rates at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the RHC has provided during the time period covered in the audited cost report. RHCs receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then increased each January 1st by the percent change in the medicare economic index (MEI).

(4) For RHCs in existence during calendar years 1999 and 2000, the agency sets the encounter rates prospectively using a weighted average of one hundred percent of the RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-549-1500.

(b) PPS base encounter rates are determined using medicare's audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

(c) The revised APM uses each RHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency will recoup from RHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rate that the agency pays RHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For RHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for RHCs receiving their initial RHC designation after 2002) increased by the cumulative

percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2009 through 2011. The rates will be increased by the MEI effective January 1, 2012, and each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency will recoup from RHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(d) For RHCs that choose to be paid under the revised APM, the agency will periodically rebase the encounter rates using the RHC cost reports and other relevant data. Rebasing will be done only for RHCs that are reimbursed under the APM.

(e) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) The agency pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different health care professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(9) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(10) Payments for non-RHC services provided in an RHC are made on a fee-for-service basis using the agency's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(11) For clients enrolled with a managed care organization (MCO), covered RHC services are paid for by that plan.

(12) For clients enrolled with an MCO, the agency pays each RHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The RHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each RHC, the agency performs an annual reconciliation of the enhancement payments. For each RHC, the agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the RHC has been overpaid, the agency will recoup the appropriate amount. If the RHC has been underpaid, the agency will pay the difference.

(13) Only clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service, regardless of the type of service performed.

WSR 15-08-058

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed March 27, 2015, 10:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-039.

Title of Rule and Other Identifying Information: Chapter 182-557 WAC, Health homes.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on May 5, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 6, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on May 5, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 27, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to this chapter are necessary to develop a grievance and appeal process for the health homes program and to add a clinical eligibility tool for those clients who do not have sufficient claims history to qualify for health homes.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Barcus, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Agnes Ericson, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1115.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

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.

March 27, 2015
Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-21-048, filed 10/11/13, effective 11/11/13)

WAC 182-557-0050 Health home—General. (1) The agency's health home program provides patient-centered care to ~~((beneficiaries))~~ participants who:

(a) Have ~~((a))~~ at least one chronic condition as defined in WAC 182-557-0100; and

(b) ~~((Be))~~ Are at risk of a second chronic condition ((with)) as evidenced by a minimum predictive risk score of 1.5((and

~~((c) Are at risk for high health costs, avoidable admissions to institutional care settings, and poor health outcomes)).~~

(2) The health home((s)) program offers six care coordination activities to assist ((the beneficiary)) participants in self-managing ((his or her)) their conditions and navigating the health care system:

(a) Comprehensive or intensive care management including, but not limited to, assessing participant's readiness for self-management, promoting self-management skills, coordinating interventions tailored to meet the ~~((beneficiary's))~~ participant's needs, and facilitating improved outcomes and appropriate use of health care services;

(b) Care coordination and health promotion;

(c) Comprehensive transitional care between care settings including, but not limited to, after discharge from an inpatient facility (hospital, rehabilitative, psychiatric, skilled nursing, substance use disorder treatment or residential habilitation setting);

(d) Individual and family support services to provide health promotion, education, training and coordination of covered services for ~~((beneficiaries))~~ participants and their support network;

(e) Referrals to community and support services; and

(f) Use of health information technology (HIT) to link services between the health home and ~~((beneficiaries'))~~ participants' providers.

(3) The agency's health home program does not:

(a) Change the scope of services for which a ~~((beneficiary))~~ participant is eligible under medicare or a Title XIX medicaid program;

(b) Interfere with the relationship between a ~~((beneficiary))~~ participant and his or her chosen agency-enrolled provider(s);

(c) Duplicate case management activities the ~~((beneficiary))~~ participant is receiving from other providers or programs; or

(d) Substitute for established activities that are available through other programs administered ~~((through))~~ by the agency or other state agencies.

(4) Qualified health home providers must:

(a) Contract with the agency to provide services under this chapter to eligible ~~((beneficiaries))~~ participants;

(b) Accept the terms and conditions in the agency's contract;

(c) Be able to meet the network and quality standards established by the agency;

(d) Accept the rates established by the agency; and

(e) Comply with all applicable state and federal requirements.

AMENDATORY SECTION (Amending WSR 13-12-002, filed 5/22/13, effective 7/1/13)

WAC 182-557-0100 Health home program—Definitions. The following terms and definitions apply to the health home program:

Action - For the purposes of this chapter, means one or more of the following:

(1) The denial of eligibility for health home services.

(2) The denial or limited authorization by the qualified health home of a requested health home service, including a type or level of health home service.

(3) The reduction, suspension, or termination by the qualified health home of a previously authorized health home service.

(4) The failure of a qualified health home to provide authorized health home services or provide health home services as quickly as the participant's condition requires.

Agency - See WAC 182-500-0010.

~~((Beneficiary - A person who is eligible for health home services. See WAC 182-557-0200.))~~

Chronic condition - Means a condition that, in combination with the ((beneficiary's)) client's health care expenditure risk score, determines eligibility for health home services. The chronic conditions ((covered)) are mental health conditions, substance use disorders, asthma, diabetes, heart disease, cancer, cerebrovascular disease, coronary artery disease, dementia or Alzheimer's disease, intellectual disability ((or disease)), HIV/AIDS, renal failure, chronic respiratory conditions, neurological disease, gastrointestinal, hematological, and musculoskeletal conditions.

~~((Contractor - The entity providing covered services under contract with the agency.))~~

Client - For the purposes of this chapter, means a person who is eligible to receive health home services under this chapter.

Clinical eligibility tool - Means an electronic spreadsheet which uses manually entered demographic, diagnoses, and pharmacy information to calculate an individual's expected health care expenditure risk score.

Coverage area((s)) - ~~((Predetermined))~~ Means a geographical area((s)) composed of ((specific counties that will facilitate a phased-in implementation of health homes.

~~((Covered services - The medicare and medicaid covered services that will be coordinated as part of health home program activities.~~

~~((DSHS - The department of social and health services.))~~ one or more counties within Washington state.

Fee-for-service (FFS) - See WAC 182-500-0035.

Full dual eligible - For the purpose of this chapter, means ((an individual)) a fee-for-service client who receives qualified medicare beneficiary coverage or specified low-income medicare beneficiary coverage and categorically needy health care coverage.

Grievance - Means an expression of a participant's dissatisfaction about any matter other than an action. Possible subjects for grievances include the quality of health home services provided and aspects of interpersonal relationships, such as rudeness.

Health action plan - ~~((A beneficiary prioritized plan identifying what the beneficiary plans to do to improve their health and/or self-management of health conditions.~~

Health home - ~~An entity composed of community based providers, qualified and contracted by the agency to provide health home services to eligible beneficiaries.)~~ Means a plan that identifies the participant's goals to improve and self-manage their health conditions.

Health home care coordinator - Means staff employed by or subcontracted by the qualified health home to provide one or more of the six defined health home care coordination benefits listed in WAC 182-557-0050.

Health home services - Means services described in WAC 182-557-0050 (2)(a) through (f).

Medicaid - See WAC 182-500-0070.

~~((**Participation** - A beneficiary's agreement to a health action plan which constitutes an agreement by the beneficiary to participate in health home services.~~

~~**Predictive modeling** - Using historical medical claims data to predict future utilization of health care services.~~

~~**PRISM or Predictive Risk Intelligence System** - A DSHS secure web-based predictive modeling and clinical decision support tool. This tool provides a unified view of medical, behavioral health, and long-term care service data that is refreshed on a regular basis. PRISM provides prospective medical risk scores that are a measure of expected medical costs in the next twelve months based on the patient's disease profile and pharmacy utilization.~~

~~**Risk score** - A measure of expected cost risk in the next twelve months based on the beneficiary's disease profiles, medical care utilization, and pharmacy utilization.~~

~~**Self-management** - With guidance from a health home care coordinator or health home care team, the concept of the beneficiary being the driver of his or her own health through the process of:~~

- ~~• Identification of health care conditions;~~
- ~~• Health action planning;~~
- ~~• Education;~~
- ~~• Monitoring to ensure progress towards achievement of health action goals; and~~
- ~~• Active involvement of the beneficiary in the decision-making process with the health home care coordinator or health home care team.)~~

~~**Participant** - Means a client who has agreed to receive health home services under the requirements of this chapter.~~

~~**Qualified health home** - Means an organization that contracts with the agency to provide health home services to participants in one or more coverage areas.~~

AMENDATORY SECTION (Amending WSR 13-12-002, filed 5/22/13, effective 7/1/13)

WAC 182-557-0200 Health home program—~~((**Client**))~~ **Eligibility ((and participation)).** (1) To ((participate in)) be eligible for the health home program, a ((beneficiary)) client must:

- ~~(a) Be a recipient of categorically needy health care coverage((; or~~
- ~~(b) A full dual eligible; and~~
- ~~(i)) through:~~

~~(i) Fee-for-service, including full dual eligible clients; or~~

~~(ii) An agency-contracted managed care organization.~~

~~(b) Have one or more chronic condition((s)) as defined in WAC 182-557-0100; and~~

~~(c) Be at risk of developing another chronic condition as determined by a ((PRISM)) risk score of 1.5 or greater based on either:~~

~~(i) The risk score ((of 1.5 or greater; and)) from algorithms used to measure the expected health care expenditures for the next twelve months based on the client's demographic, diagnoses, and pharmacy history relative to a reference group. These algorithms are developed by the department of social and health services and are used to initiate an eligibility determination; or~~

~~(ii) A risk score from the agency's clinical eligibility tool located on the agency's web site and developed by the department of social and health services. This tool may be used by a health care provider to determine whether a client has a risk score of 1.5 or greater. See the agency's clinical eligibility tool at http://www.hca.wa.gov/Pages/health_homes.aspx; and~~

~~(d) Agree to participate in a health home program.~~

~~(2) A ((beneficiary participating in the health home program must not be:~~

~~(a) Eligible for)) client is ineligible to receive health home services when the client has third-party coverage that provides comparable health care ((management)) services or requires administrative controls that ((would duplicate or interfere with)) duplicates services provided by the agency's health home program((; or~~

~~(b) Receiving services through another health system that health home services would duplicate)).~~

~~(3) Using ((data)) information provided by the department of social and health services (DSHS), the agency identifies ((beneficiaries)) clients who are ((potential participants of)) eligible for health home services.~~

~~((a) Beneficiaries who are)) (4) When the agency determines a client is eligible for health home((s will be enrolled with a qualified health home; and~~

~~(b)) services, the agency enrolls the client with a qualified health home in the coverage area where the client lives.~~

~~(a) The client may decline ((enrollment)) health home services or change to a different ((plan if he or she chooses to.~~

~~(4) A beneficiary who meets the participation requirements in this section will:~~

~~(a) Receive services from a qualified health home that contracts with the agency to provide health home services in the coverage area in which the beneficiary resides;~~

~~(b) Work with a care coordinator employed by or contracting with a qualified health home provider to)) qualified health home or a different health home care coordinator.~~

~~(b) If the client accepts enrollment in the health home program, a health home care coordinator will:~~

~~(i) Work with the participant to develop a health action plan that ((details)) describes the ((beneficiary's)) participant's health goals and includes a plan for ((achievement of)) reaching those goals; and~~

~~((e) Receive additional)) (ii) Provide health home services at a level appropriate to the ((beneficiary's)) participant's needs.~~

(5) A participant who does not agree with a decision regarding health home services, including a decision regarding the ~~((beneficiary's))~~ client's eligibility to ~~((participate in))~~ receive health home services, has the right to an administrative hearing as described in chapter 182-526 WAC.

AMENDATORY SECTION (Amending WSR 13-12-002, filed 5/22/13, effective 7/1/13)

WAC 182-557-0300 Health home services—Confidentiality and data sharing. (1) Qualified health homes ~~((contractors))~~ must comply with the confidentiality and data sharing requirements that apply to ~~((clients))~~ participants eligible under medicare and Title XIX medicaid programs and as specified in the health home contract.

(2) The agency and the department of social and health services (DSHS) share health care data with qualified health homes ~~((contractors))~~ under the provisions of RCW 70.02.050 and the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(3) The agency requires qualified health homes ~~((contractors))~~ to monitor and evaluate participant activities and report to the agency as required by the health home contract.

NEW SECTION

WAC 182-557-0350 Health home—Grievance and appeals. (1) Qualified health homes must have a grievance and appeals process in place that complies with the requirements of this section and must maintain records of all grievances and appeals.

(a) This section contains information about the grievance system for fee-for-service clients, including full dual eligible clients, for health home services. These participants must follow the process in chapter 182-526 WAC for appeals.

(b) Participants who are enrolled in an agency-contracted managed care organization must follow the process in WAC 182-538-110 to file a grievance or an appeal for health home services.

(2) Grievance process.

(a) Only a participant or the participant's authorized representative may file a grievance with the qualified health home orally or in writing. A health home care coordinator may not file a grievance for the participant unless the participant gives the health home care coordinator written consent to act on the participant's behalf.

(b) The qualified health home must:

(i) Accept, document, record, and process grievances that it receives from the participant, the participant's representative, or the agency;

(ii) Acknowledge receipt of each grievance, either orally or in writing, within two business days of receiving the grievance;

(iii) Assist the participant with all grievance processes;

(iv) Cooperate with any representative authorized in writing by the participant;

(v) Ensure that decision makers on grievances were not involved in previous levels of review or decision making for the grievance;

(vi) Consider all information submitted by the participant or the participant's authorized representative;

(vii) Investigate and resolve all grievances;

(viii) Complete the disposition of a grievance and notice to the affected parties as quickly as the participant's health condition requires, but no later than forty-five calendar days from receipt of the grievance;

(ix) Notify the participant, either orally or in writing, of the disposition of grievances within five business days of determination. Notification must be in writing if the grievance is related to a quality of care issue.

(3) Appeal process.

(a) The qualified health home must give the participant written notice of an action.

(b) The written notice must:

(i) State what action the qualified health home intends to take and the effective date of the action;

(ii) Explain the specific facts and reasons for the decision to take the intended action;

(iii) Explain the specific rule or rules that support the decision, or the specific change in federal or state law that requires the action;

(iv) Explain the participant's right to appeal the action according to chapter 182-526 WAC;

(v) State that the participant must request a hearing within ninety calendar days from the date that the notice of action is mailed.

(c) The qualified health home must send the written notice to the participant no later than ten days before the date of action. The written notice may be sent by the qualified health home no later than the date of the action it describes only if:

(i) The qualified health home has factual information confirming the death of a participant; or

(ii) The qualified health home receives a written statement signed by a participant that:

(A) The participant no longer wishes to receive health home services; or

(B) Provides information that requires termination or reduction of health home services and which indicates that the participant understands that supplying the information will result in health home services being ended or reduced.

(d) A health home care coordinator may not file an appeal for the participant.

(e) If the agency receives a request to appeal an action of the qualified health home, the agency will provide the qualified health home notice of the request.

(f) The agency will process the participant's appeal in accordance with chapter 182-526 WAC.

(g) Continued coverage. If a participant appeals an action by a qualified health home, the participant's health home services will continue consistent with WAC 182-504-0130.

(h) If the participant requests a hearing, the qualified health home must provide to the agency and the participant, upon request, and within three working days, all documentation related to the appeal.

(i) The qualified health home is an independent party and is responsible for its own representation in any administrative hearing, subsequent review process, and judicial proceedings.

(j) If a final order, as defined in WAC 182-526-0010, requires a qualified health home to provide the participant health home services that were not provided while the appeal was pending, the qualified health home must authorize or provide the participant those health home services promptly. A qualified health home cannot seek further review of a final order issued in a participant's administrative appeal of an action taken by the qualified health home.

AMENDATORY SECTION (Amending WSR 13-12-002, filed 5/22/13, effective 7/1/13)

WAC 182-557-0400 Health home—Payment. Only an agency-contracted qualified health home may bill and be paid for providing health home services described in this chapter. Billing requirements and payment methodology are described in the contract between the agency and the ~~(contractor)~~ qualified health home.

WSR 15-08-063
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed March 27, 2015, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-03-073.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-478-0006 The clothing, personal maintenance, and necessary incidentals (CPI) payment standard for cash assistance.

Hearing Location(s): DSHS Headquarters, Office Building, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on May 5, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 6, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., May 5, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by TTY (360) 664-6178 or (360) 664-6092 or e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The economic services administration, community services division is proposing to create WAC 388-478-0006, establishing the clothing, personal maintenance, and necessary incidentals (CPI) payment standard for cash assistance programs. RCW 74.04.770 provides the department with authority to establish cash assistance payment standards.

Reasons Supporting Proposal: Currently, the department relies on WAC 182-515-1500 and 182-513-1300 to establish CPI payment standards for cash assistance. The health care authority plans to repeal both rules, since they pertain directly

to cash assistance. The department is proposing to establish CPI standards in WAC 388-478-0006.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.770, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.62.030.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Daisha Gomillion, 712 Pear Street S.E., Olympia, WA 98501, (360) 725-4781.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule change does not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule change is exempt as allowed in 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."

March 24, 2015

Katherine I. Vasquez

Rules Coordinator

NEW SECTION

WAC 388-478-0006 The clothing, personal maintenance, and necessary incidentals (CPI) payment standard for cash assistance. Payment standards for assistance units (AU) in certain facilities and medical institutions are based on the need for clothing, personal maintenance, and necessary incidentals (CPI).

(1) The CPI cash assistance payment standard for recipients of cash assistance is:

(a) Forty-one dollars and sixty-two cents for eligible persons in medical institutions as defined in WAC 182-500-0050; or

(b) Thirty-eight dollars and eighty-four cents for eligible persons in one of the following facilities as defined in WAC 182-513-1100:

- (i) Adult residential care (ARC) facility;
- (ii) Adult residential rehabilitation centers (ARRC);
- (iii) Adult residential treatment facility (ARTF);
- (iv) Enhanced adult residential care facility (EARC); or
- (v) Developmental disability administration (DDA) group home facilities.

(2) Refer to WAC 388-478-0010 when living situation is other than the medical institutions defined in WAC 182-500-0050 and group facilities defined in WAC 182-513-1100.

WSR 15-08-071
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed March 31, 2015, 8:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-20-116.

Title of Rule and Other Identifying Information: The department is amending chapter 388-106 WAC, Long-term care services, specifically medicaid personal care (MPC) and community options program entry system (COPEs), to prepare for implementation of the community first choice state plan option effective July 1, 2015, and to add information on the room and board amount paid as an apple health MAGI client on MPC living in a residential setting.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on May 5, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 6, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., May 5, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant by TTY (360) 664-6178 or (360) 664-6092 or e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the changes in WAC 388-106-0300, 388-106-0305, and 388-106-0310 is to remove personal care, nurse delegation, and community transition services under the COPEs program in preparation for these services being offered in the new community first choice state plan program. This is in accordance with ESHB 2746, which mandated the department to refinance MPC services under the community first choice option. The proposed WAC also adds a new COPEs waiver service, the wellness education service.

The purpose of the changes to WAC 388-106-0210(2) is to clarify that when the community first choice program becomes available, individuals who are eligible for this program will not be eligible for the MPC funded services. Financial eligibility rules are also clarified and corrected.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Barbara Hanneman, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2525.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a

small business economic impact statement is not required as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is [are] explicitly and specifically dictated by statute.

March 25, 2015
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-038, filed 1/12/15, effective 2/12/15)

WAC 388-106-0210 Am I eligible for medicaid personal care (MPC)(-)(-)funded services? You are eligible for MPC-funded services when the department assesses your functional ability and determines that you meet all of the following criteria:

(1) You are certified as noninstitutional categorically needy, as defined in WAC ~~((182-513-1305))~~ 182-500-0020, or have been determined eligible for Washington apple health alternative benefit plan coverage, as described in WAC 182-505-0250. Categorically needy medical institutional programs described in chapter 182-513 and 182-515 WAC do not meet ~~((this))~~ the criteria for MPC.

(2) You do not require the level of care furnished in a hospital or nursing facility, as defined in WAC 388-106-0355, an intermediate care facility for intellectual disability, as defined in WAC 388-825-3080 and WAC 388-828-4400, an institution providing psychiatric services for individuals under the age of twenty-one, or an institution for mental disease for individuals age sixty-five or over.

(3) You are functionally eligible which means one of the following applies:

(a) You have an unmet or partially met need for assistance with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in:		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup

For each Activity of Daily Living, the minimum level of assistance required in:		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A
Body care which includes: ■Application of ointment or lotions; ■Toenails trimmed; ■Dry bandage changes; (■ = if you are over eighteen years of age or older) or Passive range of motion treatment (if you are four years of age or older).	Needs or Received/ Needs Need: Coded as "Yes"	N/A
Your need for assistance in any of the activities listed in subsection (a) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

; or

(b) You have an unmet or partially met need for assistance or the activity did not occur (because you were unable or no provider was available) with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Eating	Supervision	One person physical assist

For each Activity of Daily Living, the minimum level of assistance required in		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Toileting	Extensive Assistance	One person physical assist
Bathing	Physical Help/part of bathing	One person physical assist
Dressing	Extensive Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Personal Hygiene	Extensive Assistance	One person physical assist
Body care which includes: ■Application of ointment or lotions; ■Toenails trimmed; ■Dry bandage changes; (■ = if you are eighteen years of age or older) or Passive range of motion treatment (if you are four years of age or older).	Needs or Received/ Needs Need: Coded as "Yes"	N/A
Your need for assistance in any of the activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose determining your functional eligibility.		

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0225 How do I pay for MPC? (1) If you live in your own home, you do not participate toward the cost of your personal care services.

(2) If you live in a residential facility and are:

(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a personal needs allowance of ~~((forty one dollars and forty four cents per month. Effective January 1, 2009 this amount will change to))~~ sixty-two dollars and seventy-nine cents;

(b) An SSI beneficiary who receives SSI and another source of income, you only pay for board and room. You are allowed to keep a personal needs allowance of ~~((forty one dollars and forty four cents. You keep an additional twenty dollars from non-SSI income. Effective January 1, 2009 this amount will change to))~~ sixty-two dollars and seventy-nine cents. ~~((This new amount includes the twenty dollar disregard; or))~~

(c) An SSI-related person under WAC 182-512-0050, you may be required to participate towards the cost of your personal care services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate described in WAC 182-513-1305. You are allowed to keep a personal needs allowance of ~~((forty one dollars and forty four cents. You keep an additional twenty dollars from non-SSI income. Effective January 1, 2009 this amount will change to))~~ sixty-two dollars and seventy-nine cents. ~~((This new amount includes the twenty dollar disregard; or))~~

(d) ~~((A medical care services))~~ An aged, blind, disabled (ABD) cash assistance client eligible for categorically needy medicaid coverage in an adult family home (AFH), you are allowed to keep a personal needs allowance (PNA) of thirty-eight dollars and eighty-four cents per month. The remainder of your income must be paid to the AFH as your room and board up to the ALTSA room and board standards; or

(e) ~~((A medical care services))~~ An aged, blind, disabled (ABD) cash assistance client eligible for categorically needy medicaid coverage in an assisted living facility, you are authorized a personal needs grant of up to thirty-eight dollars and eighty-four cents per month; ~~((or))~~

(f) A Washington apple health MAGI-based client as determined by WAC 182-505-0250, you pay only for room and board. If your income is less than the ALTSA room and board standard, you are allowed to keep a personal needs allowance of sixty-two dollars and seventy-nine cents and the remainder of your income goes to the provider for room and board.

(3) Personal needs allowance (PNA) standards and the ALTSA room and board standard can be found at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/lcstandardsPNAchartsufile.shtml>.

~~((3))~~ (4) The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the medicaid resident dies in the facility; or

(b) Day of service before the day the medicaid resident is discharged.

AMENDATORY SECTION (Amending WSR 15-03-038, filed 1/12/15, effective 2/12/15)

WAC 388-106-0300 What services may I receive under community options program entry system (COPES) when I live in my own home? When you live in your own home, you may be eligible to receive only the following services under COPES:

(1) ~~((Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working-
(2))~~ Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

~~((3))~~ (2) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

~~((4))~~ (3) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

~~((5))~~ (4) Home health aide service tasks in your own home, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;

(b) Are beyond the amount, duration or scope of medicaid reimbursed home health services as described in WAC 182-551-2120 and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace medicare home health services.

~~((6))~~(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if:

(i) You live alone in your own home;

(ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or

(iii) No one in your home, including you, can secure help in an emergency.

(b) A medication reminder if you:

(i) Are eligible for a PERS unit;

(ii) Do not have a caregiver available to provide the service; and

(iii) Are able to use the reminder to take your medications.

~~((7))~~ (5) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100.

~~((8))~~ (6) Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000, if the items are:

- (a) Medically necessary under WAC 182-500-0700;
- (b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;
- (c) Directly medically or remedially beneficial to you; and
- (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare.

~~((9))~~ (7) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

- (a) Adjusting to a serious impairment;
- (b) Managing personal care needs; or
- (c) Developing necessary skills to deal with care providers.

~~((10))~~ (8) Transportation services, when the service:

- (a) Provides access to community services and resources to meet your therapeutic goal;
- (b) Is not diverting in nature; and
- (c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community.

~~((11))~~ ~~Nurse delegation services, when:~~

~~(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;~~

~~(b) Your medical condition is considered stable and predictable by the delegating nurse; and~~

~~(c) Services are provided in compliance with WAC 246-840-930.~~

~~((12))~~ (9) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

- (a) Nursing assessment/reassessment;
- (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

- (e) File review; and/or
- (f) Evaluation of health-related care needs affecting service plan and delivery.

~~((13))~~ ~~Community transition services, if you are being discharged from the nursing facility or hospital and if ser-~~

~~vices are necessary for you to set up your own home. Services:~~

~~(a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and~~

~~(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.~~

~~((14))~~ (10) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility; or

(F) Are not capable of participating safely in a group care setting.

(11) Wellness education, as identified in your person centered service plan to address an assessed need or condition.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0305 What services may I receive under COPEs if I live in a residential facility? If you live in one of the following residential facilities: A licensed assisted living facility contracted with the department to provide assisted living, enhanced adult residential care, enhanced adult residential care-specialized dementia care or an adult family home, you may be eligible to receive only the following services under COPEs:

(1) ~~((Personal care services as defined under WAC 388-106-0010.~~

(2)) Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000, when the items are:

- (a) Medically necessary under WAC 182-500-0005; and
- (b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and
- (c) Directly medically or remedially beneficial to you; and
- (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility.

((3)) (2) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

- (a) Adjusting to a serious impairment;
- (b) Managing personal care needs; or
- (c) Developing necessary skills to deal with care providers.

((4)) (3) Transportation services, when the service:

- (a) Provides access to community services and resources to meet a therapeutic goal;
- (b) Is not diverting in nature;
- (c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community; and
- (d) Does not replace the services required by DSHS contract in residential facilities.

((5)) (4) Skilled nursing, when the service is:

- (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;
- (b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100; and
- (c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).

((6)) (5) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

- (a) Nursing assessment/reassessment;
- (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In none-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

~~((7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:~~

~~(a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.~~

~~(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.~~

((8)) (6) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714, and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility;

or

(F) Are not capable of participating safely in a group care setting.

(7) Wellness education, as identified in your person centered service plan to address an assessed need or condition.

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

AMENDATORY SECTION (Amending WSR 12-16-026, filed 7/25/12, effective 8/25/12)

WAC 388-106-0310 Am I eligible for COPES-funded services? You are eligible for COPES-funded services if you meet all of the following criteria. The department must assess your needs in CARE and determine that:

(1) You are age:

(a) Eighteen or older and blind or have a disability, as defined in WAC 182-512-0050; or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC ((388-515-1505)) 182-515-1505, community options program entry system (COPEs).

(3) ~~((You:~~

~~(a) Are not eligible for medicaid personal care services (MPC); or~~

~~(b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide.~~

(4)) Your CARE assessment shows you need and are eligible for:

(a) The level of care provided in a nursing facility (or will likely need the level of care within thirty days unless COPEs services are provided) which is defined in WAC 388-106-0355(1); and

(b) A COPEs waiver service.

(5) You continue to receive at least one monthly waiver service.

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 15-08-073
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 31, 2015, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-09-093.

Title of Rule and Other Identifying Information: Chapter 296-104 WAC, Board of boiler rules—Substantive.

Hearing Location(s): Department of Labor and Industries (L&I), 950 Broadway, Suite 200, Tacoma, WA 98402-4453 (for directions to the L&I office <http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/tacoma.asp>), on May 27, 2015, at 10:00 a.m.

Date of Intended Adoption: June 30, 2015.

Submit Written Comments to: Alicia Curry, Rules Coordinator, P.O. Box 44400, Olympia, WA 98504-4400, e-mail Alicia.Curry@Lni.wa.gov, fax (360) 902-5292, e-mail or fax comments by 5 p.m. on May 27, 2015.

Assistance for Persons with Disabilities: Contact Alicia Curry by May 14, 2015, at Alicia.Curry@Lni.wa.gov or (360) 902-6244.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of boiler rules is proposing amendments to chapter 296-104 WAC, Board of boiler rules—Substantive. The boiler rules are reviewed on a regular basis to ensure the rules are consis-

tent with national boiler and unfired pressure vessel safety standards and industry practice.

Proposed amendments to this chapter will:

- Add new definitions for "jacketed steam kettles" and update the existing definition for "places of public assembly";
- Adopt the latest edition of national standards for American Petroleum Institute (API) 510 for boilers and unfired pressure vessels
- Adopt the latest edition of national standards for TAPPI TIP 0402-16 for pulp or paper machine dryers;
- Clarify the annual internal and external inspection requirements for power boilers;
- Clarify the shutdown requirements for automatically fired boilers, after December 2004;
- Correct references to National Board (NB) 263 and API 510 for continuous adoption of the latest edition of standards; and
- Update the definitions to modern day terms by replacing the term for "boarding homes" with "assisted living facilities."

Reasons Supporting Proposal: Rule making is needed to update the existing rules and adopt the most current national standards for the proper construction, installation, inspection, operation, maintenance, alterations, and repairs of boilers and unfired pressure vessels to protect public safety.

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Statute Being Implemented: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

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, Implementation, and Enforcement: José Rodriguez, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The board is exempt from preparing a small business economic impact statement under RCW 19.85.030 (1)(a), since the proposed rules would not impose more than minor costs on businesses.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis (CBA) may be obtained by contacting Alicia Curry, Rules Coordinator, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6244, fax (360) 902-5292, e-mail Alicia.Curry@Lni.wa.gov. A CBA is required that complies with RCW 34.05.328 (1)(c) and (d), as the probable benefits of the rules are greater than the probable costs.

March 31, 2015

Robert E. Olson
Chair

AMENDATORY SECTION (Amending WSR 13-10-018, filed 4/23/13, effective 6/1/13)

WAC 296-104-010 Administration—What are the definitions of terms used in this chapter? "Accident" shall mean a failure of the boiler or unfired pressure vessel resulting in personal injury or property loss or an event which ren-

ders a boiler or unfired pressure vessel unsafe to return to operation.

"Agriculture purposes" shall mean any act performed on a farm in production of crops or livestock, and shall include the storage of such crops and livestock in their natural state, but shall not be construed to include the processing or sale of crops or livestock.

"Attendant" shall mean the person in charge of the operation of a boiler or unfired pressure vessel.

"Automatic operation of a boiler" shall mean automatic unattended control of feed water and fuel in order to maintain the pressure and temperature within the limits set. Controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, power failure, high temperatures or pressures.

"Board of boiler rules" or **"board"** shall mean the board created by law and empowered under RCW 70.79.010.

"Boiler and unfired pressure vessel installation/reinstallation permit," shall mean a permit approved by the chief inspector before starting installation or reinstallation of any boiler and unfired pressure vessel within the jurisdiction of Washington.

Owner/user inspection agency's, and Washington specials are exempt from "boiler and unfired pressure vessel installation/reinstallation permit."

"Boilers and/or unfired pressure vessels" - Below are definitions for types of boilers and unfired pressure vessels used in these regulations:

- **"Condemned boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that has been inspected and declared unsafe or disqualified for further use by legal requirements and appropriately marked by an inspector.
- "Corrosion"** shall mean the destruction or deterioration of a material, that results from a reaction with its environment.
- **"Expansion tank"** shall mean a tank used to absorb excess water pressure. Expansion tanks installed in closed water heating systems and hot water supply systems shall meet the requirements of ASME Section IV, HG-709.
- "Historical boilers and unfired pressure vessel"** shall mean nonstandard boilers and pressure vessels including steam tractors, traction engines, hobby steam boilers, portable steam boilers, and other such boilers or pressure vessels that are preserved, restored, and maintained only for demonstration, viewing, or educational purposes. They do not include miniature hobby boilers as described in RCW 70.79.070.
- **"Hot water heater"** shall mean a closed vessel designed to supply hot water for external use to the system. All vessels must be listed by a nationally recognized testing agency and shall be protected with an approved temperature and pressure safety relief valve and shall not exceed any of the following limits:
 - * Pressure of 160 psi (1100 kpa);

- * Temperature of 210 degrees F (99°C).

Additional requirements:

- * Hot water heaters exceeding 120 gallons (454 liters) must be ASME code stamped;
- * Hot water heaters exceeding 200,000 Btu/hr (58.58 kW) input must be ASME code stamped.

"Indirect water heater" shall mean a closed vessel appliance used to heat water for use external to itself, which includes a heat exchanger used to transfer heat to water from an external source. The requirements and limits described above shall apply.

- **"Low pressure boiler"** shall mean a steam boiler operating at a pressure not exceeding 15 psig or a boiler in which water is heated and intended for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy. Low pressure boilers open to atmosphere and vacuum boilers are excluded.
- **"Nonstandard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that does not bear marking of the codes adopted in WAC 296-104-200.
- "Pool heaters"** shall mean a gas, oil, or electric appliance that is used to heat water contained in swimming pools, spas, and hot tubs.
 - (a) Pool heaters with energy input equivalent to 399,999 Btu/hr (117.2 kW) or less shall be manufactured and certified to ANSI Z21.56, UL1261, CSA 4.7 or equivalent manufacturing standards, as approved by the chief inspector, and are excluded from the limit and control devices requirements of WAC 296-104-300 through 296-104-303.
 - (b) Pool heaters with energy input of 400,000 Btu/hr and above shall be stamped with an ASME Section IV Code symbol, and the requirements of WAC 296-104-300 through 296-104-303 shall apply.
 - (c) Pool heaters open to the atmosphere are excluded.
- **"Power boiler"** shall mean a boiler in which steam or other vapor is generated at a pressure of more than 15 psig for use external to itself or a boiler in which water is heated and intended for operation at pressures in excess of 160 psig and/or temperatures in excess of 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy.
- **"Reinstalled boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel removed from its original setting and reset at the same location or at a new location without change of ownership.
- **"Rental boiler"** shall mean any power or low pressure heating boiler that is under a rental contract between owner and user.

- **"Second hand boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel of which both the location and ownership have changed after primary use.
- **"Standard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel which bears the marking of the codes adopted in WAC 296-104-200.
- **"Unfired pressure vessel"** shall mean a closed vessel under pressure excluding:
 - * Fired process tubular heaters;
 - * Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices where the primary design considerations and/or stresses are derived from the functional requirements of the device;
 - * Piping whose primary function is to transport fluids from one location to another;
 - * Those vessels defined as low pressure heating boilers or power boilers.
- **"Unfired steam boiler"** shall mean a pressure vessel in which steam is generated by an indirect application of heat. It shall not include pressure vessels known as evaporators, heat exchangers, or vessels in which steam is generated by the use of heat resulting from the operation of a processing system containing a number of pressure vessels, such as used in the manufacture of chemical and petroleum products, which will be classed as unfired pressure vessels.

"Certificate of competency" shall mean a certificate issued by the Washington state board of boiler rules to a person who has passed the tests as set forth in WAC 296-104-050.

"Certificate of inspection" shall mean a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. The boiler or unfired pressure vessel must comply with rules, regulations, and appropriate fee payment shall be made directly to the chief boiler inspector.

"Code, API-510" shall mean the Pressure Vessel Inspection Code of the American Petroleum Institute with addenda and revisions, thereto made and approved by the institute which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, ASME" shall mean the boiler and pressure vessel code of the American Society of Mechanical Engineers with addenda thereto made and approved by the council of the society which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, NBIC" shall mean the National Board Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors with addenda and revisions, thereto made and approved by the National Board of Boiler and Pressure Vessel Inspectors and adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Commission" shall mean an annual commission card issued to a person in the employ of Washington state, an insurance company or a company owner/user inspection

agency holding a Washington state certificate of competency which authorizes them to perform inspections of boilers and/or unfired pressure vessels.

"Department" as used herein shall mean the department of labor and industries of the state of Washington.

"Director" shall mean the director of the department of labor and industries.

"Domestic and/or residential purposes" shall mean serving a private residence or an apartment house of less than six families.

"Existing installations" shall mean any boiler or unfired pressure vessel constructed, installed, placed in operation, or contracted for before January 1, 1952.

"Inspection certificate" see "certificate of inspection."

"Inspection, external" shall mean an inspection made while a boiler or unfired pressure vessel is in operation and includes the inspection and demonstration of controls and safety devices required by these rules.

"Inspection, internal" shall mean an inspection made when a boiler or unfired pressure vessel is shut down and handholes, manholes, or other inspection openings are open or removed for examination of the interior. An external ultrasonic examination of unfired pressure vessels less than 36" inside diameter shall constitute an internal inspection.

"Inspector" shall mean the chief boiler inspector, a deputy inspector, or a special inspector.

- **"Chief inspector"** shall mean the inspector appointed under RCW 70.79.100 who serves as the secretary to the board without a vote.
- **"Deputy inspector"** shall mean an inspector appointed under RCW 70.79.120.
- **"Special inspector"** shall mean an inspector holding a Washington commission identified under RCW 70.79.130.

"Jacketed steam kettle" shall mean a pressure vessel with inner and outer walls that is subject to steam pressure and is used to boil or heat liquids or to cook food. Jacketed steam kettles with a total volume greater than or equal to one and one-half cubic feet (11.25 gallons) shall be ASME code stamped.

(a) **"Unfired jacketed steam kettle"** is one where the steam within the jacket's walls is generated external to itself, such as from a boiler or other steam source.

(b) **"Direct fired jacketed steam kettle"** is a jacketed steam kettle having its own source of energy, such as gas or electricity for generating steam within the jacket's walls.

"Nationwide engineering standard" shall mean a nationally accepted design method, formulae and practice acceptable to the board.

"Operating permit" see "certificate of inspection."

"Owner" or **"user"** shall mean a person, firm, or corporation owning or operating any boiler or unfired pressure vessel within the state.

"Owner/user inspection agency" shall mean an owner or user of boilers and/or pressure vessels that maintains an established inspection department, whose organization and inspection procedures meet the requirements of a nationally recognized standard acceptable to the department.

"Place of public assembly" or "assembly hall" shall mean a building or portion of a building used for the gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, or dining or waiting transportation. This shall also include child care centers (those agencies which operate for the care of thirteen or more children), public and private hospitals, nursing (~~and boarding~~) homes and assisted living facilities.

"Special design" shall mean a design using nationally or internationally recognized engineering standards other than the codes adopted in WAC 296-104-200.

AMENDATORY SECTION (Amending WSR 14-13-087, filed 6/17/14, effective 8/1/14)

WAC 296-104-050 Administration—What are the requirements for a boiler inspector? Application for examination for a Washington state certificate of competency shall be in writing upon a form to be furnished by the chief inspector stating the school and education of the applicant, a list of employers, period of employment and position held with each employer. Applications containing willful falsification or untruthful statements shall be rejected.

In order to qualify as a prospective inspector, an applicant shall meet the minimum requirements as set forth in the national board's "Rules for Commissioned Inspectors," NB263, (~~Revision 8 (02/07)~~) (current edition) or API-510 (~~ninth~~) current edition, as appropriate.

If the applicant's history and experience meet with the approval of the chief inspector based on the board of boiler rules approved criteria, the candidate shall be given the Washington state examination. If the applicant is accepted on the merits of these examinations or as provided for in WAC 296-104-065, and the applicant is in possession of a national board commission or API-510 certification, as appropriate, a Washington state certificate of competency will be issued by the chief inspector.

For those applicants sitting for the national board examination in conjunction with the Washington state examination, a certificate of competency will be issued by the chief inspector upon receipt of a valid national board commission.

Examinations shall be held at locations and times when considered necessary by the chief inspector. The examinations may be offered four times each year, namely, the first Wednesday and following Thursday of the months of March, June, September and December. Special examinations may be held when considered necessary by the chief inspector.

AMENDATORY SECTION (Amending WSR 10-06-049, filed 2/24/10, effective 4/1/10)

WAC 296-104-100 Inspection—How often must boilers and unfired pressure vessels be inspected? In accordance with RCW 70.79.080, 70.79.090, and 70.79.240 the following inspection requirements shall apply:

(1) **Power boilers** shall be inspected:

(a) Externally while under pressure - Annually.

(b) Internally and externally while not under pressure - Annually, except as noted in (~~the following paragraph~~) (d) of this subsection.

(c) The required annual "certificate of inspection" will not be issued until both inspections listed in (a) and (b) of this subsection are completed and reported to the jurisdiction.

(d) A power boiler in a national board accredited owner-user inspection program may have the internal inspection intervals extended by the owner-user inspection organization to five years maximum under the following conditions:

(i) The boiler water treatment and specific chemical limits are prescribed and monitored by an individual or company that specializes in the water treatment field;

(ii) Nondestructive examination (NDE) is performed along with the internal inspections;

(iii) The boiler is monitored within a manned operating facility;

(iv) Inspection, maintenance, and water treatment records are maintained;

(v) There is sufficient inspection history for the boiler or a boiler in similar service to justify the increase in the inspection interval; and

(vi) This provision shall not apply to a black liquor recovery boiler or any boiler with an unsuitable corrosion rate, remaining life, and/or repair history.

(2) **Organic vapor boilers** shall be inspected:

(a) Externally while under pressure - Annually.

(b) Internally and externally while not under pressure - Biennially.

(3) **Low pressure boilers** shall be inspected:

(a) Externally while in operation and under pressure - Biennially.

(b) Internally while not under pressure (except where construction does not permit an internal) - Every fourth year.

(c) Internally, all steam heating boilers will have as a minimum, an internal of their low water fuel cut off - Biennially.

(d) Internally, none required for nonvapor boilers using glycol, or adequately treated with corrosion inhibitor.

(4) **Hot water heaters** shall be inspected:

(a) Externally - Biennially.

(b) Internally - None required.

(5) **Unfired pressure vessels** shall be inspected:

(a) Externally - Biennially.

(b) Internally:

(i) When subject to corrosion and construction permits - Biennially, except that expansion tanks, air separators, ammonia storage tanks and hot water storage tanks may have internal inspections at the inspector's discretion. Vessels in an owner-user inspection program may follow intervals established by the NBIC or API-510 (~~ninth edition with addenda~~).

(ii) Pulp or paper dryer rolls may be inspected on a five-year basis in accordance with TAPPI TIP 0402-16 (~~2001 edition~~) revised 2011, provided the owner has established a written inspection program accepted by the inspector that meets the minimum requirements of TAPPI TIP 0402-16 (~~2001 edition~~) revised 2011.

(iii) Vessels not subject to corrosion do not require an internal.

AMENDATORY SECTION (Amending WSR 14-13-087, filed 6/17/14, effective 8/1/14)

WAC 296-104-102 Inspection—What are the standards for in-service inspection? Where a conflict exists between the requirements of the standards listed below and this chapter, this chapter shall prevail. The duties of the in-service inspector do not include the installation's compliance with other standards and requirements (environmental, construction, electrical, undefined industrial standards, etc.), for which other regulatory agencies have authority and responsibility to oversee.

(1) The standard for inspection of nonnuclear boilers, unfired pressure vessels, and safety devices in the National Board Inspection Code (NBIC), (~~(2013)~~) current edition Part 2, excluding Section 6, Supplements 1, 2, 5, 6, and 7 which may be used as nonmandatory guidelines.

(2) The standard for inspection of historical steam boilers of riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be Appendix "C" of the National Board Inspection Code (NBIC) 2004 edition with 2006 addenda.

(3) The standard for inspection of nuclear items is ASME section XI. The applicable ASME Code edition and addenda shall be as specified in the owner in-service inspection program plan.

(4) Where a petroleum or chemical process industry owner/user inspection agency so chooses, the standard for inspection of unfired pressure vessels used by the owner shall be the API-510 Pressure Vessel Inspection Code, (~~(ninth)~~) current edition (~~(, with addenda)~~). This code may be used on or after the date of issue.

(5) TAPPI TIP 0402-16, (~~(dated 2006)~~) revised 2011 may be used for both pulp dryers and paper machine dryers when requested by the owner. When requested by the owner, this document becomes a requirement and not a guideline.

AMENDATORY SECTION (Amending WSR 13-10-018, filed 4/23/13, effective 6/1/13)

WAC 296-104-303 Installation—What control and limit devices are required on automatically fired boilers after December 2004? In addition to those requirements listed in WAC 296-104-302, the following are also required with regard to installations or refits of gas, oil, or combinations of gas or oil:

(1) All automatically fired boilers with input greater than 400,000 Btu/hr, including electric boilers with input greater than 117 kW shall have a manually operated remote shutdown switch or circuit breaker. Activation of the emergency shutdown switch or circuit breaker shall immediately shut off the fuel or energy supply and initiate the boiler shutdown sequence in accordance with manufacturer's recommendations. The shutdown switch should be located just outside the boiler room door and marked for easy identification. Consideration should be given to the type and location of the switch to safeguard against tampering. If the boiler room door is on the building exterior, the switch should be located just inside the door. If there is more than one door to the boiler room, there should be a switch located at each door.

(2) A means shall be provided for testing the operation of hot water heating boiler low-water fuel cutoff(s) without resorting to draining the entire system. Such means shall not render the device(s) inoperable. If the means temporarily isolates the device from the boiler during testing, it shall automatically return to its normal position.

WSR 15-08-077
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Securities Division)
[Filed March 31, 2015, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-24-069.

Title of Rule and Other Identifying Information: General conditions to be met—Written disclosure legends, WAC 460-44A-502 (4)(d).

The securities division is proposing to adopt a rule to remove a reference to a now outdated North American Securities Administrators Association (NASAA) guideline and to instead include the suggested disclosure legend text directly in the rule.

Hearing Location(s): Washington State Department of Financial Institutions, 3rd Floor, Room 319, 150 Israel Road S.W., Tumwater, WA 98501, on May 5, 2015, at 2:00 p.m.

Date of Intended Adoption: May 6, 2015.

Submit Written Comments to: Faith Anderson, Esq., Washington State Department of Financial Institutions, 150 Israel Road S.W., Tumwater, WA 98501, e-mail Jordan.Rood@dfi.wa.gov, fax (360) 704-6992, by May 4, 2015.

Assistance for Persons with Disabilities: Contact Carolyn Hawkeye, P.O. Box 9033, Olympia, WA 98507-9033, by April 14, 2015, TTY (360) 664-8126 or (360) 902-8824.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division is proposing to amend WAC 460-44A-502 (4)(d) regarding the legend requirements for certificates documenting restricted securities to remove a reference to a now outdated NASAA guideline and to instead include the suggested text directly in the rule.

Reasons Supporting Proposal: The NASAA Uniform Disclosure Guidelines on Legends, CCH Para. 1352 (1989), is outdated and difficult to obtain for attorneys and securities issuers alike. The securities division is proposing to amend its rules to remove this outdated reference and to include the suggested text of the legend disclosure in the rule itself.

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

Statute Being Implemented: RCW 21.20.320.

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

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Faith Anderson, 150 Israel Road S.W., Tumwater, WA

98501, (360) 902-8797; Implementation: Scott Jarvis, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8723; and Enforcement: William Beatty, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8734.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The primary effects of the proposed amendments to this rule are to remove an outdated citation in the rule and to add currently suggested legend disclosure text directly into the rule. By amending the legend disclosure text in the rule, rather than referencing an outdated source, no additional burdens are being created for securities issuers or their counsel, and as a result the rule will not have more than a "minor cost" as defined in chapter 19.85 RCW. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one of the agencies listed in RCW 34.05.328.

March 31, 2015
Scott Jarvis
Director

AMENDATORY SECTION (Amending WSR 14-11-005, filed 5/7/14, effective 6/7/14)

WAC 460-44A-502 General conditions to be met. The following conditions shall be applicable to offers and sales made under WAC 460-44A-504 or 460-44A-505:

(1) "Integration." All sales that are part of the same offering under these rules must meet all of the terms and conditions of these rules. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering, will not be considered part of that offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under these rules, other than those offers or sales of securities under an employee benefit plan.

Note: The term "offering" is not defined in the securities acts. If the issuer offers or sells securities for which the safe harbor rule in WAC 460-44A-502(1) is unavailable, the determination as to whether separate sales of securities are part of the same offering (i.e., are considered "integrated") depends on the particular facts and circumstances. Generally, transactions otherwise meeting the requirements of an exemption will not be integrated with simultaneous offerings being made outside the United States in compliance with Securities and Exchange Commission Regulation S.

The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions under these rules:

- (a) Whether the sales are part of a single plan of financing;
- (b) Whether the sales involve issuance of the same class of securities;
- (c) Whether the sales have been made at or about the same time;
- (d) Whether the same type of consideration is received; and

(e) Whether the sales are made for the same general purpose.

See Securities and Exchange Commission Release No. 33-4552 (November 6, 1962).

(2) Information requirements.

(a) When information must be furnished.

If the issuer sells securities under WAC 460-44A-505 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in WAC 460-44A-502 (2)(b) to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information to purchasers when it sells securities under WAC 460-44A-504, or to any accredited investor.

Note: When an issuer provides information to investors pursuant to WAC 460-44A-502 (2)(a), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal and state securities laws.

(b) Type of information to be furnished.

(i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:

(A) Nonfinancial statement information. If the issuer is eligible to use Regulation A, the same kind of information as would be required in Part II of Form 1-A, 17 C.F.R. Sec. 239.90. If the issuer is not eligible to use Regulation A, the same kind of information as required in Part I of a registration statement filed under the Securities Act on the form that the issuer would be entitled to use.

(B) Financial statement information.

(I) Offerings up to \$2,000,000. The information required in Article 8 of Regulation S-X, 17 C.F.R. Sec. 210.8, except that only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited.

(II) Offerings up to \$7,500,000. The financial statement information required in Form S-1, 17 C.F.R. Sec. 239.10. If an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet, which shall be dated within 120 days of the start of the offering, must be audited. If the issuer is a limited partnership and cannot obtain the required financial statements without unreasonable effort or expense, it may furnish financial statements that have been prepared on the basis of federal income tax requirements and examined and reported on in accordance with generally accepted auditing standards by an independent public or certified accountant.

(C) If the issuer is a foreign private issuer eligible to use Form 20-F, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Securities Act of 1933 on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by (2)(b)(i)(B)(I) or (II) of this subsection, as appropriate.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information required by

Securities and Exchange Commission Regulation D, Rule 502 (b)(2)(ii) as appropriate.

(iii) Exhibits required to be filed with the administrator of securities or the securities and exchange commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10-K and Form 10-KSB report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his written request, a reasonable time prior to his purchase.

(iv) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505, the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request a reasonable time prior to his purchase.

(v) The issuer shall also make available to each purchaser at a reasonable time prior to his purchase of securities in a transaction under WAC 460-44A-505 the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information which the issuer possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of information furnished under WAC 460-44A-502 (2)(b)(i) or (ii).

(vi) For business combinations or exchange offers, in addition to information required by Form S-4, 17 C.F.R. Sec. 239.25, the issuer shall provide to each purchaser at the time the plan is submitted to security holders, or, with an exchange, during the course of the transaction and prior to sale, written information about any terms or arrangements of the proposed transactions that are materially different from those for all other security holders. For purposes of this subsection, an issuer which is not subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 may satisfy the requirements of Part I.B. or C. of Form S-4 by compliance with (b)(i) of this subsection.

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under WAC 460-44A-505, the issuer shall advise the purchaser of the limitations on resale in the manner contained in subsection (4)(b) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

(3) Limitation on manner of offering. Neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(a) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(b) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising:

Provided, however, that publication by an issuer of a notice in accordance with 17 C.F.R. Sec. 230.135c or filing with the Securities and Exchange Commission by an issuer of a notice of sales on Form D (17 C.F.R. 239.500) in which the issuer has made a good faith and reasonable attempt to comply with the requirements of such form, shall not be deemed to constitute general solicitation or general advertising for purposes of this section: Provided further, that, if the requirements of 17 C.F.R. Sec. 230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section.

(4) Limitations on resale. Securities acquired in a transaction under WAC 460-44A-501 through 460-44A-505 shall have the status of restricted securities acquired in a nonpublic offering transaction under section 4 (a)(2) of the Securities Act of 1933 and RCW 21.20.320(1) and cannot be resold without registration under the Securities Act of Washington or an exemption therefrom. The issuer shall exercise reasonable care to assure that the securities are restricted and that the purchasers of the securities are not underwriters within the meaning of section 2 (a)(11) of the Securities Act of 1933, which reasonable care may be demonstrated by the following:

(a) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(b) Written disclosure to each purchaser prior to sale that the securities have not been registered under the Securities Act of 1933, and the Washington administrator of securities has not reviewed or recommended the offering or offering circular and the securities have not been registered under the Securities Act of Washington, chapter 21.20 RCW, and, therefore, cannot be resold unless they are registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW or unless an exemption from registration is available; and

(c) Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under the Securities Act of 1933 and the Securities Act of Washington chapter 21.20 RCW and setting forth or referring to the restrictions on transferability and sale of the securities.

(d) A written disclosure or legend will be deemed to comply with the provisions of WAC 460-44A-502 (4)(b) or (c) if it (~~complies with the North American Securities Administrators Association Uniform Disclosure Guidelines on Legends, NASAA Reports CCH Para. 1352 (1989))~~ states:

(i) These securities have not been registered under the Securities Act of 1933 or applicable state securities laws;

(ii) These securities have not been approved or disapproved by the Securities and Exchange Commission or any state securities commission nor has the Securities and Exchange Commission or any state securities commission passed upon the accuracy or adequacy of the prospectus or

any alternative document. Any representation to the contrary is a criminal offense.

(iii) These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act of 1933, as amended, and the applicable state securities laws, pursuant to registration or exemption therefrom.

(iv) Investors should be aware that they will be required to bear the financial risks of this investment for an indefinite period of time.

While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, WAC 460-44A-502 (2)(b)(vii) requires the delivery of written disclosure of the limitations on resale to investors in certain instances.

WSR 15-08-085
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed March 31, 2015, 12:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-082.

Title of Rule and Other Identifying Information: WAC 392-800-825 Application—Approval process—Timeline.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), OSPI Policy Room, 2nd Floor, 600 Washington Street, Olympia, WA 98501, on May 12, 2015, at 1:00 p.m.

Date of Intended Adoption: May 15, 2015.

Submit Written Comments to: Michael J. (Mike) Dooley, P.O. Box 47200, Olympia, WA 98504-7200, e-mail mike.dooley@k12.wa.us, fax (360) 725-6505, by May 11, 2015.

Assistance for Persons with Disabilities: Contact Kristin Murphy by May 5, 2015, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amended rule provides further clarification for tribal compact application deadlines.

Reasons Supporting Proposal: WAC 392-800-825 requires federally recognized tribes or BIE schools seeking approval of a state-tribal education compact to submit an application to OSPI by February 1. These proposed changes to WAC 392-800-825 will keep the tribal compact application deadline at February 1, but institute a deadline of June 30, by which point the tribal compact agreement must be agreed to and signed off on by both parties. If an agreement is not executed by June 30, then the tribal school would have to reapply by February 1, of the following year.

Statutory Authority for Adoption: RCW 28A.715.010.

Statute Being Implemented: RCW 28A.715.010.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This amended rule provides further clarification for tribal compact application deadlines.

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Michael J. (Mike) Dooley, OSPI, Olympia, Washington, (360) 725-6305; Implementation: T. J. Kelly, OSPI, Olympia, Washington, (360) 725-3601; and Enforcement: JoLynn Berge, OSPI, Olympia, Washington, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. It has minimal to no impact on state funding.

A cost-benefit analysis is not required under RCW 34.05.328. It has minimal to no impact on state funding.

March 31, 2015
Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 14-04-001, filed 1/22/14, effective 2/22/14)

WAC 392-800-825 Application—Approval process—Timeline. (1) Beginning in February 2014, eligible federally recognized tribes or BIE schools may apply to the superintendent of public instruction to initiate negotiations to enact a state-tribal education compact.

(2) Federally recognized tribes or BIE schools seeking approval of a state-tribal education compact must submit the application to the superintendent of public instruction by February 1st of the school year preceding the year in which the federally recognized tribes or BIE school seeks to commence operation of a compact school. ~~((Federally recognized tribes or BIE schools seeking to commence operation of a compact school in 2014 must submit an application by April 15, 2014.))~~

(3) The application must be hand delivered or mailed to the superintendent of public instruction at the following address:

Superintendent of Public Instruction
600 Washington Street S.E.
P.O. Box 47200
Olympia, WA 98504

(4) Within ninety days of his or her receipt of the application, the superintendent of public instruction will convene a government-to-government meeting for the purpose of considering the application and initiating negotiations.

(5) The superintendent of public instruction will approve or disapprove state-tribal education compact applications no later than April 15th of the school year, as defined by WAC 392-121-031, in which the federally recognized tribe or BIE school intends to commence operation of a compact school. The superintendent of public instruction's approval or disapproval of the application shall constitute final agency action.

(6) State-tribal education compacts must be executed by the superintendent of public instruction and the federally recognized tribe or BIE school governing body on or before June 30th prior to the operation of a compact school commences.

WSR 15-08-086
PROPOSED RULES
DEPARTMENT OF HEALTH
 (Board of Osteopathic Medicine and Surgery)
 [Filed March 31, 2015, 12:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-083.

Title of Rule and Other Identifying Information: Chapter 246-853 WAC, Osteopathic medicine and surgery, proposed amendment or repeal of rules relating to: (1) The examination for licensure as an osteopathic physician; (2) delegation of the use of laser, light, radiofrequency, and plasma (LLRP) devices as applied to the skin; and (3) general housekeeping. Also proposing new sections establishing a retired active status credential and imposing reentry requirements for licensed osteopathic physicians who have been out of practice for a certain period of time.

Hearing Location(s): Oxford Suites, 1701 East Yakima Avenue, Town Meeting Rooms 1 and 2, Yakima, WA 98901, on May 15, 2015, at 9:30 a.m.

Date of Intended Adoption: May 15, 2015.

Submit Written Comments to: Brett Cain, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by May 13, 2015.

Assistance for Persons with Disabilities: Contact Cece Zenker at (360) 236-4633, by May 1, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will update the list of examinations available for licensure as an osteopathic physician, reduce barriers for delegation of LLRP devices, establish requirements for a retired active status credential and requirements for reentry to practice; as well as make general housekeeping changes. The fees for the retired active license are being adopted separately by the department.

Reasons Supporting Proposal: The proposed rules establish standards to ensure that physicians returning to practice meet certain requirements to ensure patient safety. The proposed rules also set requirements to allow physicians who would like to work on a limited or emergent basis to obtain a credential for a reduced fee, and will allow osteopathic physicians to delegate LLRP devices to other qualified professionals not licensed by the department of health. Finally, the proposed rules make general housekeeping changes to ensure the chapter is current, relevant, and aligns with industry standards.

Statutory Authority for Adoption: RCW 18.57.005, 18.57A.020, and 18.130.250.

Statute Being Implemented: RCW 18.57.005 and 18.130.250.

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

Name of Proponent: Department of health, board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brett Cain, 111 Israel Road S.E., Tumwater, WA 98504, (360) 236-4766.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Brett Cain, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4766, fax (360) 236-2901, e-mail brett.cain@doh.wa.gov.

March 31, 2015
 Catherine Hunter, DO
 Chair

AMENDATORY SECTION (Amending WSR 93-24-028, filed 11/22/93, effective 12/23/93)

WAC 246-853-020 Osteopathic medicine and surgery examination. (1) An applicant(s) for licensure as an osteopathic physician(s) must successfully pass (the Federation of State Licensing Board (FLEX) with a minimum score of seventy five on each component of the FLEX I and II examination or after December 1993 satisfactorily pass the United States Medical Licensing Examination (USMLE) with a minimum score as established by the coordinating agencies, Federation of State Medical Boards of the United States and the National Board of Medical Examiners; and obtain at least a seventy five percent overall average on a board administered examination on osteopathic principles and practices.

~~The board shall waive the examination required under RCW 18.57.080 if the applicant has passed the FLEX examination prior to June 1985 with a FLEX weighted average of seventy five percent, or the FLEX I and FLEX II examinations with a minimum score of seventy five on each component and satisfactorily passes the board administered examination on the principles and practices of osteopathic medicine and surgery.~~

~~An applicant who has passed all parts of the examination given by the National Board of Osteopathic Examiners may be granted a license without further examination.);~~

(a) Parts I, II, and III of the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA) or Parts I, II, and III of the exam administered by the National Board of Osteopathic Medical Examiners (NBOME); or

(b) The Washington Osteopathic Principles and Practices (OP&P) Examination with a minimum score of seventy-five percent in each section; the Comprehensive Osteopathic Variable-Purpose Examination (COMVEX) administered by NBOME with a minimum passing score as established by NBOME; or other state administered OP&P exam approved by the board.

(2) In addition to the exams identified in subsection (1)(b) of this section, the applicant must also pass at least one of the following:

(a) The Federation of State Licensing Board (FLEX) Examination taken prior to June 1985 passed with a FLEX weighted average of a minimum seventy-five percent; or

(b) The FLEX I and FLEX II Examination with a minimum score of seventy-five on each component; or

(c) The United States Medical Licensing Examination (USMLE) Steps I, II, and III after December 1993 with a

minimum score as established by the Federation of State Medical Boards and the National Board of Medical Examiners.

AMENDATORY SECTION (Amending WSR 91-20-120, filed 9/30/91, effective 10/31/91)

WAC 246-853-130 General provisions for mandatory reporting rules. (1) "Unprofessional conduct" shall mean the conduct described in RCW 18.130.180.

(2) "Hospital" shall mean any health care institution licensed pursuant to chapter 70.41 RCW.

(3) "Nursing home" shall mean any health care institution regulated under chapter 18.51 RCW.

(4) "Board" shall mean the Washington state board of osteopathic medicine and surgery (~~whose address is:~~

Department of Health
Professional Licensing Services
1300 Quince St., MS: EY-23
Olympia, WA 98504).

(5) "Physician" shall mean an osteopathic physician and surgeon licensed pursuant to chapter 18.57 RCW.

(6) "Physician's assistant" shall mean an osteopathic physician's assistant approved pursuant to chapter 18.57A RCW.

(7) "Mentally or physically impaired practitioner" shall mean an osteopathic physician and surgeon or osteopathic physician's assistant who has been determined by a court to be mentally incompetent or mentally ill or who is unable to practice medicine with reasonable skill and safety to patients by reason of any mental or physical condition.

NEW SECTION

WAC 246-853-235 Retired active license. (1) To obtain a retired active license an osteopathic physician must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).

(2) An osteopathic physician with a retired active license may not receive compensation for health care services.

(3) An osteopathic physician with a retired active license may practice under the following conditions:

(a) In emergent circumstances calling for immediate action; or

(b) Intermittent circumstances on a part-time or full-time nonpermanent basis.

(4) A retired active license expires each year on the license holder's birthday. Retired active credential renewal fees are accepted no sooner than ninety days prior to the expiration date.

(5) An osteopathic physician with a retired active license shall complete and report one hundred fifty hours of continuing medical education every three years.

NEW SECTION

WAC 246-853-245 Reentry to practice requirements. An osteopathic physician who has not been in active practice for a period of at least five years in any jurisdiction in the United States must:

(1) Successfully pass a board approved competency evaluation;

(2) Successfully pass a board approved exam;

(3) Successfully complete a board approved retraining program arranged by the osteopathic physician; or

(4) Successfully complete a board approved reentry to practice or monitoring program.

AMENDATORY SECTION (Amending WSR 08-20-125, filed 10/1/08, effective 11/1/08)

WAC 246-853-630 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this section, laser, light, radiofrequency, and plasma (LLRP) devices are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescriptive devices.

(2) Because an LLRP device is used to treat disease, injuries, deformities, and other physical conditions in human beings, the use of an LLRP device is the practice of osteopathic medicine under RCW 18.57.001. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than those in subsection (1) of this section constitutes surgery and is outside the scope of this section.

OSTEOPATHIC PHYSICIAN RESPONSIBILITIES

(4) An osteopathic physician must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) An osteopathic physician must use an LLRP device in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, an osteopathic physician must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that (~~an allied health care professional~~) a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

(7) Regardless of who performs LLRP device treatment, the osteopathic physician is ultimately responsible for the safety of the patient.

(8) Regardless of who performs LLRP device treatment, the osteopathic physician is responsible for assuring that each treatment is documented in the patient's medical record.

(9) The osteopathic physician must ensure that there is a quality assurance program for the facility at which LLRP device procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program shall include the following:

(a) A mechanism to identify complications and problematic effects of treatment and to determine their cause;

- (b) A mechanism to review the adherence of supervised (~~(allied health care)~~) professionals to written protocols;
- (c) A mechanism to monitor the quality of treatments;
- (d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection (10)(d) of this section and osteopathic physician supervising practices; and
- (e) Ongoing training to maintain and improve the quality of treatment and performance of the treating (~~(allied health care)~~) professionals.

OSTEOPATHIC PHYSICIAN DELEGATION OF LLRP TREATMENT

(10) An osteopathic physician who meets the requirements in subsections (1) through (9) of this section may delegate an LLRP device procedure to a properly trained (~~(allied health care professional licensed under the authority of RCW 18.130.040)~~) and licensed professional, whose licensure and scope of practice allows the use of a prescriptive LLRP medical device, provided all the following conditions are met:

- (a) The treatment in no way involves surgery as that term is understood in the practice of osteopathic medicine;
- (b) Such delegated use falls within the supervised (~~(allied health care)~~) professional's lawful scope of practice;
- (c) The LLRP device is not used on the globe of the eye;
- (d) An osteopathic physician has a written office protocol for the supervised (~~(allied health care)~~) professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:
 - (i) The identity of the individual osteopathic physician authorized to use the LLRP device and responsible for the delegation of the procedure;
 - (ii) A statement of the activities, decision criteria, and plan the supervised (~~(allied health care)~~) professional must follow when performing procedures delegated pursuant to this rule;
 - (iii) Selection criteria to screen patients for the appropriateness of treatments;
 - (iv) Identification of devices and settings to be used for patients who meet selection criteria;
 - (v) Methods by which the specified device is to be operated and maintained;
 - (vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and
 - (vii) A statement of the activities, decision criteria, and plan the supervised (~~(allied health care)~~) professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing osteopathic physician concerning specific decisions made;
- (e) The supervised (~~(allied health care)~~) professional has appropriate training including, but not limited to:
 - (i) Application techniques of each LLRP device;
 - (ii) Cutaneous medicine;
 - (iii) Indications and contraindications for such procedures;
 - (iv) Preprocedural and postprocedural care;
 - (v) Potential complications; and
 - (vi) Infectious disease control involved with each treatment;

(f) The delegating osteopathic physician ensures that the supervised (~~(allied health care)~~) professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device;

(g) The delegating osteopathic physician shall be on the immediate premises during the patient's initial treatment and be able to treat complications, provide consultation, or resolve problems, if indicated. The supervised (~~(allied health care)~~) professional may complete the initial treatment if the physician is called away to attend to an emergency;

(h) Existing patients with an established treatment plan may continue to receive care during temporary absences of the delegating osteopathic physician provided there is a local back-up physician, licensed under chapter 18.57 or 18.71 RCW, who satisfies the requirements of subsection (4) of this section. The local back-up physician must agree in writing to treat complications, provide consultation or resolve problems if medically indicated. In case of an emergency the delegating osteopathic physician or a back-up physician shall be reachable by phone and able to see the patient within sixty minutes.

(11) The use of, or the delegation of the use of, an LLRP device by an osteopathic physician assistant is covered by WAC 246-854-220.

(12) This section only applies to the use of LLRP devices by osteopathic physicians and osteopathic physician assistants.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-853-260 USMLE examination application deadline.

WSR 15-08-089
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 31, 2015, 12:51 p.m.]

Continuance of WSR 15-04-115.

Preproposal statement of inquiry was filed as WSR 14-09-090.

Title of Rule and Other Identifying Information: Chapter 296-900 WAC, Administrative rules.

Date of Intended Adoption: June 1, 2015.

Submit Written Comments to: Cynthia Ireland, P.O. Box 44620, Olympia, WA 98504-4620, e-mail Cynthia.ireland@lni.wa.gov, fax (360) 902-5619, by April 14, 2015, at 5 p.m.

March 31, 2015
 Joel Sacks
 Director

WSR 15-08-090
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed March 31, 2015, 2:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-095.

Title of Rule and Other Identifying Information: WAC 182-553-500 Home infusion therapy/parenteral nutrition program—Coverage, services, limitations, prior authorization, and reimbursement.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on May 5, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 6, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on May 5, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 27, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending the rule to include continuous glucose monitoring systems among equipment that this program pays for.

Reasons Supporting Proposal: Adding new language regarding continuous glucose monitoring systems will make the rule consistent with other chapters in WAC.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Sean Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Lisa Humphrey, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

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.

March 31, 2015
Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-16-059, filed 7/30/12, effective 8/30/12)

WAC 182-553-500 Home infusion therapy~~((#))~~ and parenteral nutrition program—Coverage, services, limitations, prior authorization, and reimbursement. (1) The home infusion therapy~~((#))~~ and parenteral nutrition program covers the following for eligible clients, subject to the limitations and restrictions listed:

(a) Home infusion supplies, limited to one month's supply per client, per calendar month.

(b) Parenteral nutrition solutions, limited to one month's supply per client, per calendar month.

(c) One type of infusion pump, one type of parenteral pump, and~~((#))~~ one type of insulin pump per client, per calendar month and as follows:

(i) All rent-to-purchase infusion, parenteral, and~~((#))~~ insulin pumps must be new equipment at the beginning of the rental period.

(ii) The agency covers the rental payment for each type of infusion, parenteral, or insulin pump for up to twelve months. ~~((#))~~The agency considers a pump purchased after twelve months of rental payments.~~((#))~~

(iii) The agency covers only one purchased infusion pump or parenteral pump per client in a five-year period.

(iv) The agency covers only one purchased insulin pump per client in a four-year period.

(2) Covered supplies and equipment that are within the described limitations listed in subsection (1) of this section do not require prior authorization for reimbursement.

(3) The agency pays for FDA approved continuous glucose monitoring systems and related monitoring equipment and supplies with prior authorization when the client:

(a) Is either younger than nineteen years of age or enrolled in a continuous glucose monitoring trial. The trial must be approved by an institutional review board under RCW 70.02.010;

(b) Has diabetes mellitus and is insulin dependent;

(c) Has had a severe episode of hypoglycemia (blood glucose less than or equal to 50mg/dl) either requiring assistance from another person or complicated by a hypoglycemia-induced seizure;

(d) Has first tried a seventy-two-hour monitoring period;

(e) Has recurrent unexplained severe hypoglycemic events despite modifications in therapy;

(f) Is followed by a pediatric endocrinologist;

(g) Has A1c target goals deemed appropriate by a physician; and

(h) Has submitted results of self-monitoring of blood glucose levels taken at least four times per day.

(4) Requests for supplies ~~((and/))~~ or equipment that exceed the limitations or restrictions listed in this section require prior authorization and are evaluated on an individual basis according to the provisions of WAC 182-501-0165 and 182-501-0169.

~~((#))~~ (5) The agency may adopt policies, procedure codes, and~~((#))~~ rates ~~((that are))~~ inconsistent with those set by medicare ~~((if the agency determines that such actions are necessary))~~.

~~((#))~~ (6) Agency reimbursement for equipment rentals and purchases includes the following:

(a) Instructions to a client (~~((or))~~), a caregiver, or both, on the safe and proper use of equipment provided;

(b) Full service warranty;

(c) Delivery and pickup; and

(d) Setup, fitting, and adjustments.

~~((6) Except as provided in subsection (6) of this section, the))~~ (7) The agency does not pay separately for home infusion supplies and equipment or parenteral nutrition solutions, except:

(a) When a client resides in a state-owned facility (~~((i.e.))~~ e.g., state school, a developmental disabilities (~~((DD))~~) facility, a mental health facility, Western State Hospital, (~~and~~) or Eastern State Hospital).

(b) When a client has elected and is eligible to receive the agency's hospice benefit, unless (~~both of the following apply~~):

(i) The client has a preexisting diagnosis that requires parenteral support; and

(ii) The preexisting diagnosis is not related to the diagnosis that qualifies the client for hospice.

~~((7))~~ (8) The agency pays separately for a client's infusion pump, parenteral nutrition pump, insulin pump, solutions, and (~~or~~) insulin infusion supplies when the client:

(a) Resides in a nursing facility; and

(b) Meets the criteria in WAC 182-553-300.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

April 1, 2015

David Brenna

Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 10-23-076, filed 11/15/10, effective 12/16/10)

WAC 181-82A-204 Endorsement requirements. (1)

Candidates completing endorsements required to obtain a residency certificate, shall complete (~~(college/university))~~ teacher preparation programs approved by the professional educator standards board pursuant to chapter 181-78A WAC, which include methodology (see WAC 181-78A-264(5)) and field experience/internship (see WAC 181-78A-264(6)) and pursuant to endorsement program approval requirements in this chapter.

(2) In order to add an additional endorsement, the candidate shall:

(a) Have completed a state-approved endorsement program which includes methodology (see WAC 181-78A-264(5)) and addresses all endorsement-specific competencies adopted and published by the professional educator standards board. The requirement for field experience shall be at the discretion of the college/university. Provided, that in cases where programs require a field experience/internship, the colleges/universities should make every attempt to allow the individual to complete field-based requirements for the endorsement within the confines of the individual's teaching schedule; or

(b) Achieve National Board certification in a Washington teaching endorsement area and hold a valid National Board certificate; or

(c) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought. The instructional methodology and content-related skills of the desired subject endorsement must be compatible with one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 1 endorsements adopted and published by the professional educator standards board. The applicant must document a minimum of ninety days teaching experience as a teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, in the endorsement area that is

WSR 15-08-098

PROPOSED RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed April 1, 2015, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-23-017.

Title of Rule and Other Identifying Information: Amends WAC 181-82A-204 to waive the requirement for science teachers to add a designated science endorsement.

Hearing Location(s): Courtyard Marriott, 480 Columbia Point Drive, Richland, WA 99352, on May 21, 2015, at 8:30.

Date of Intended Adoption: May 21, 2015.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 14, 2015.

Assistance for Persons with Disabilities: Contact David Brenna by May 14, 2015, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Teachers are required to teach for ninety days in the subject area of their endorsement. Science teachers wanting to add a designated science endorsement will no longer be required to teach ninety days in the assignment area in order to add the additional endorsement.

Reasons Supporting Proposal: Legislation.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: RCW 28A.410.290.

compatible in instructional methodology and content-related skills to the Pathway 1 endorsement; or

(d)((+)) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought and successfully meet all eligibility criteria and process requirements for Pathway 2 endorsements as adopted and published by the professional educator standards board. The desired subject endorsement must be identified as a Pathway 2 endorsement for one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 2 endorsements adopted and published by the professional educator standards board. The applicant must document a minimum of ninety days teaching experience as a teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, while holding the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 2 endorsement.

(i) The ninety day teaching requirement is waived per RCW 28A.660.045 for individuals having an elementary education certificate but who are not employed in positions requiring an elementary education certificate and pursuing an endorsement in middle level mathematics or science.

(ii) The ninety day teaching requirement is waived for candidates holding a science or designated science endorsement who are adding a science or designated science endorsement.

(iii) Teacher preparation programs that offer Pathway 2 endorsement programs shall follow process steps as adopted by the professional educator standards board and published by the superintendent of public instruction to verify successful completion of the Pathway 2 process and to recommend adding the endorsement to the applicant's teacher certificate.

(3) Candidates from out-of-state shall be required to present verification that they completed a state-approved program (equivalent to a major) in a Washington endorsement area.

(4) Course work used to meet endorsement requirements must be completed through a regionally accredited college/university.

(5) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail system of grading shall be counted toward the course work required for the approved endorsement program.

(6) Nothing within this chapter precludes a college or university from adopting additional requirements as conditions for recommendation, by such college or university, to the superintendent of public instruction for a particular subject area endorsement.

WSR 15-08-099
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed April 1, 2015, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-017.

Title of Rule and Other Identifying Information: Accountability system: Designation of required action districts, amending WAC 180-17-010.

Hearing Location(s): Educational Service District 123, 3918 West Court Street, Pasco, WA, on May 13, 2015, at 1:00.

Date of Intended Adoption: May 14, 2015.

Submit Written Comments to: Linda Drake, State Board of Education, P.O. Box 47206, [Olympia,] WA 98504-7206, e-mail linda.drake@k12.wa.us, fax (360) 586-2357, by May 6, 2015.

Assistance for Persons with Disabilities: Contact Denise Ross by May 6, 2015, TTY (360) 644-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 28A.657-030(3) requires the state board of education to annually designate districts recommended by the superintendent of public instruction as required action districts. The purpose of this proposal is to amend existing rule WAC 180-17-010 to change the time frame when the state board must designate required action districts from January of each year to the end of March of each year.

Reasons Supporting Proposal: Data used by the office of superintendent of public instruction for making its recommendation of required action districts typically will not be available until after January. The data includes school and district graduation rate data, which is not complete and verified until after January each year.

Statutory Authority for Adoption: RCW 28A.657.120.

Statute Being Implemented: RCW 28A.657.030.

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: Linda Drake, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, (360) 725-6028; Implementation and Enforcement: Ben Rarick, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, (360) 725-6025.

A school district fiscal impact statement has been prepared under section 1, chapter 210, Laws of 2012.

School District Fiscal Impact Statement

WSR: 15-04-017	Title of Rule: WAC 180-17-010	Agency: SDF - School District Fiscal Impact - SPI.
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Part I: Estimates: No fiscal impact, this rule revision does not require any action by school district[s], and thus has no fiscal impact.

Estimated Cash Receipts to: No estimated cash receipt[s].

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: *Briefly describe by section, the sig-*

nificant provisions of the rule, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

None.

II. B - Cash Receipts Impact: Briefly describe and quantify the cash receipts impact of the rule on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

None.

II. C - Expenditures: Briefly describe the agency expenditures necessary to implement this rule (or savings resulting from this rule), identifying by section number the provisions of the rule that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

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 Thomas J. Kelly, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, phone (360) 725-6031, e-mail thomas.kelly@k12.wa.us.

A cost-benefit analysis is not required under RCW 34.05.328. This is a rule relating only to internal governmental operations that is not subject to violation by a nongovernment party (RCW 34.05.328 (5)(b)(ii)).

March 30, 2015
Ben Rarick
Executive Director

AMENDATORY SECTION (Amending WSR 10-23-083, filed 11/16/10, effective 12/17/10)

WAC 180-17-010 Designation of required action districts. ~~((In January))~~ By March 31st of each year, the state board of education shall designate as a required action district a school district recommended by the superintendent of public instruction for such designation.

WSR 15-08-100
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed April 1, 2015, 10:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-048.

Title of Rule and Other Identifying Information: WAC 182-531-1675 Gender dysphoria treatment program, 182-531-0200 Physician-related and health care professional ser-

vices requiring prior authorization, and 182-501-0070 Health care coverage—Noncovered services.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room, CSP 106B, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on May 5, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 6, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on May 5, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 27, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on current medical evidence, HCA is removing gender reassignment surgery from the noncovered health care services list and establishing coverage policy in WAC.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Gail Kreiger, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1681.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

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.

April 1, 2015
Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-15-044, filed 7/11/13, effective 8/11/13)

WAC 182-501-0070 Health care coverage—Noncovered services. (1) The medicaid agency or its designee does not pay for any health care service not listed or referred to as a covered health care service under the medical programs described in WAC 182-501-0060, regardless of medical necessity. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of health care services are described in WAC 182-502-0160.

(2) This section does not apply to health care services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 182-534 WAC.

(3) The agency or its designee does not pay for any ancillary health care service(s) provided in association with a non-covered health care service.

(4) The following list of noncovered health care services is not intended to be exhaustive. Noncovered health care services include, but are not limited to:

(a) Any health care service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanopractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related health care services, not specifically allowed under WAC 182-531-0100(4);

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

~~(i) ((Gender reassignment surgery and any surgery related to transsexualism, gender identity disorders, and body dysmorphism, and related health care services or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;~~

~~(j))~~ Hair transplants, epilation (hair removal), and electrolysis;

~~((k))~~ ~~(j)~~ Marital counseling;

~~((h))~~ ~~(k)~~ Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

~~((m))~~ ~~(l)~~ Nonmedical equipment;

~~((n))~~ ~~(m)~~ Penile implants;

~~((o))~~ ~~(n)~~ Prosthetic testicles;

~~((p))~~ ~~(o)~~ Psychiatric sleep therapy;

~~((q))~~ ~~(p)~~ Subcutaneous injection filling;

~~((r))~~ ~~(q)~~ Tattoo removal;

~~((s))~~ ~~(r)~~ Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;

~~((t))~~ ~~(s)~~ Upright magnetic resonance imaging (MRI); and

~~((u))~~ ~~(t)~~ Vehicle purchase - New or used vehicle.

(5) For a specific list of noncovered health care services in the following service categories, refer to the WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in chapter 182-546 WAC;

(b) Dental services as described in chapter 182-535 WAC;

(c) Durable medical equipment as described in chapter 182-543 WAC;

(d) Hearing care services as described in chapter 182-547 WAC;

(e) Home health services as described in WAC 182-551-2130;

(f) Hospital services as described in WAC 182-550-1600;

(g) Health care professional services as described in WAC 182-531-0150;

(h) Prescription drugs as described in chapter 182-530 WAC;

(i) Vision care hardware for clients twenty years of age and younger as described in chapter 182-544 WAC; and

(j) Vision care exams as described in WAC 182-531-1000.

(6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the agency or its designee denies all or part of a request for a non-covered health care service(s), the agency or its designee sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the agency or its designee intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the agency's or its designee's action was taken; and

(ii) Prepare a response to the agency's or its designee's decision to classify the requested health care service as non-covered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) Administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;

(iv) Instructions on how to request an exception to rule (ETR);

(v) Information regarding agency-covered health care services, if any, as an alternative to the requested noncovered health care service; and

(vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC 182-501-0160.

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

WAC 182-531-0200 Physician-related and health care professional services requiring prior authorization.

(1) The medicaid agency requires **prior authorization** for certain services. Prior authorization includes **expedited prior authorization (EPA)** and **limitation extension (LE)**. See WAC 182-501-0165.

(2) The EPA process is designed to eliminate the need for telephone prior authorization for selected admissions and procedures.

(a) The provider must create an authorization number using the process explained in the medicaid agency's physician-related billing instructions.

(b) Upon request, the provider must provide supporting clinical documentation to the medicaid agency showing how the authorization number was created.

(c) Selected nonemergency admissions to contract hospitals require EPA. These are identified in the medicaid agency billing instructions.

(d) Procedures allowing expedited prior authorization include, but are not limited to, the following:

(i) Reduction mammoplasties/mastectomy for gynecostasia;

(ii) Strabismus surgery for clients eighteen years of age and older;

(iii) Meningococcal vaccine;

(iv) Placement of drug eluting stent and device;

(v) Cochlear implants for clients twenty years of age and younger;

(vi) Hyperbaric oxygen therapy;

(vii) Visual exam/refraction for clients twenty-one years of age and older;

(viii) Blepharoplasties; and

(ix) Neuropsychological testing for clients sixteen years of age and older.

(3) The medicaid agency evaluates new technologies under the procedures in WAC 182-531-0550. These require prior authorization.

(4) Prior authorization is required for the following:

(a) Abdominoplasty;

(b) All inpatient hospital stays for **acute physical medicine and rehabilitation (PM&R)**;

(c) Unilateral cochlear implants for clients twenty years of age and younger (refer to WAC 182-531-0375);

(d) Diagnosis and treatment of eating disorders for clients twenty-one years of age and older;

(e) Osteopathic manipulative therapy in excess of the medicaid agency's published limits;

(f) Panniculectomy;

(g) Bariatric surgery (see WAC 182-531-1600); ~~(and)~~

(h) Vagus nerve stimulator insertion, which also:

(i) For coverage, must be performed in an inpatient or outpatient hospital facility; and

(ii) For reimbursement, must have the invoice attached to the claim.

(i) Osseointegrated/bone anchored hearing aids (BAHA) for clients twenty years of age and younger;

(j) Removal or repair of previously implanted BAHA or cochlear device for clients twenty one years of age and older when medically necessary; and

(k) Gender reassignment surgery (see WAC 182-531-1675).

(5) All hysterectomies performed for medical reasons may require prior authorization, as explained in subsection (2) of this section.

(a) Hysterectomies may be performed without prior authorization in either of the following circumstances:

(i) The client has been diagnosed with cancer(s) of the female reproductive organs; and/or

(ii) A hysterectomy is needed due to trauma.

(b) The agency reimburses all attending providers for a hysterectomy procedure only when the provider submits an accurately completed agency-approved consent form with the claim for reimbursement.

(6) The medicaid agency may require a second opinion and/or consultation before authorizing any elective surgical procedure.

(7) Children six years of age and younger do not require authorization for hospitalization.

NEW SECTION

WAC 182-531-1675 Washington apple health—Gender dysphoria treatment program. (1) Overview of the gender dysphoria treatment program.

(a) The medicaid agency covers the following medically necessary services, consistent with the services identified as covered in Title 182 WAC, to treat gender dysphoria:

(i) Medical services including, but not limited to:

(A) Presurgical and postsurgical hormone therapy;

(B) Prepuberty suppression therapy;

(ii) Mental health services; and

(iii) Surgical services including, but not limited to:

(A) Anesthesia;

(B) Labs;

(C) Pathology;

(D) Radiology;

(E) Hospital; and

(F) Physician services.

(b) The agency's gender dysphoria treatment program has four stages. Prior authorization is required for stage four only. Any medicaid provider can refer a client to stage one. The stages are as follows:

(i) Stage one - Initial assessment and diagnosis of gender dysphoria;

(ii) Stage two - Mental health and medical treatment;

(iii) Stage three - Presurgical requirements; and

(iv) Stage four - Gender reassignment surgery.

(c) All services under this program must be delivered by providers who meet the qualifications in subsection (2) of this section.

(d) The agency evaluates requests for noncovered services as an exception to rule under the provisions of WAC 182-501-0160.

(e) If gender dysphoria treatment is requested or prescribed for clients age twenty-one and younger under the early and periodic screening, diagnosis, and treatment (EPSDT) program, the agency evaluates it as a covered service under the EPSDT program's requirement that the service is medically necessary, safe, effective, and not experimental.

(f) The agency covers transportation services under the provisions of chapter 182-546 WAC.

(2) Qualified health care providers for gender dysphoria treatment.

(a) Providers must meet the qualifications outlined in chapter 182-502 WAC.

(b) Each provider must be recognized as an agency-designated center of excellence (COE). COE is defined in WAC 182-531-0050. To be a COE, all providers must complete an agency form attesting that they:

(i) Possess knowledge about current community, advocacy, and public policy issues relevant to transgender people and their families (sexuality, sexual health concerns, and the assessment and treatment of sexual disorders is preferred);

(ii) Endorse the *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7* as developed by the World Professional Association for Transgender Health (WPATH); and

(iii) Agree to provide services consistent with this section.

(c) Diagnosis in stage one must be made by a COE provider who is a board-certified physician, a psychologist, a board-certified psychiatrist, or a licensed advanced registered nurse practitioner (ARNP).

(d) Mental health professionals who provide stage two mental health treatment described in subsection (4)(c) of this section, or who perform the psychosocial evaluation described in subsection (5)(a)(iii) of this section must:

(i) Meet the requirements described in WAC 182-531-1400;

(ii) Sign an agency form attesting that they:

(A) Are competent in using the *Diagnostic Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* and the *International Classification of Diseases* for diagnostic purposes;

(B) Are able to recognize and diagnose coexisting mental health conditions and to distinguish these from gender dysphoria;

(C) Have completed supervised training in psychotherapy or counseling;

(D) Are knowledgeable of gender-nonconforming identities and expressions, and the assessment and treatment of gender dysphoria; and

(E) Have completed continuing education in the assessment and treatment of gender dysphoria. This may include attending relevant professional meetings, workshops, or seminars; obtaining supervision from a mental health professional with relevant experience; or participating in research related to gender nonconformity and gender dysphoria; and

(iii) Be a board-certified psychiatrist, a psychologist, or a licensed:

(A) Psychiatric ARNP;

(B) Psychiatric mental health nurse practitioner;

(C) Mental health counselor;

(D) Independent clinical social worker;

(E) Advanced social worker; or

(F) Marriage and family therapist.

(e) Any surgeon who performs gender reassignment surgery must:

(i) Be a board-certified:

(A) Urologist;

(B) Gynecologist;

(C) Plastic surgeon;

(D) Cosmetic surgeon; or

(E) General surgeon;

(ii) Have a valid medical license in the state where the surgery is performed; and

(iii) Attest to specialized abilities in genital reconstructive techniques and produce documentation showing that

they have received supervised training with a more experienced surgeon.

(f) Any medical provider managing hormone therapy, androgen suppression, or puberty suppression for clients diagnosed with gender dysphoria must:

(i) Be either of the following:

(A) A licensed, board certified:

(I) Endocrinologist;

(II) Family practitioner;

(III) Internist;

(IV) Obstetrician/gynecologist;

(V) Pediatrician;

(VI) Naturopath; or

(B) A licensed ARNP or a licensed physician's assistant; and

(ii) Sign an agency form attesting to specialized abilities managing hormone therapy in treating gender dysphoria. The specialized abilities may be proved by producing documentation showing supervised training with a more experienced physician, and attesting attendance at relevant professional meetings, workshops, or seminars.

(3) **Stage one - Initial assessment and diagnosis of gender dysphoria.** The purpose of stage one is to assess and diagnose the client, and refer the client to qualified providers. A health professional who meets the qualifications in subsection (2)(c) of this section must assess the client and:

(a) Confirm the diagnosis of gender dysphoria as defined by the *Diagnostic Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*;

(b) Determine the gender dysphoria is not the result of another mental or physical health condition, and refer the client to other specialists if other health conditions are indicated;

(c) Develop an individualized treatment plan for the client;

(d) Refer the client to qualified providers for the stage two services described in subsection (4) of this section; and

(e) Assist and support the client in navigating stage two and stage three requirements, and provide services consistent with WPATH guidelines and WAC 182-531-1675.

(4) **Stage two - Mental health and medical treatment.**

(a) Mental health and medical treatment are covered only after a health professional who meets the qualifications in subsection (2)(c) of this section has diagnosed or confirmed the diagnosis of gender dysphoria as defined by the DSM-5 criteria.

(b) Medical treatment in stage two is limited to androgen suppression, puberty suppression, continuous hormone therapy, and laboratory testing to monitor the safety of hormone therapy. Some of these prescriptions may be subject to prior authorization as required by pharmacy policy in chapter 182-530 WAC. Medical treatment must be prescribed by a COE provider who meets the requirements in subsection (2)(a), (b), and (f) of this section.

(c) The agency covers mental health treatment for the client and his or her spouse, parent, guardian, child, or person with whom the client has a child in common if the treatment is:

(i) Medically necessary;

(ii) Provided according to the provisions of WAC 182-531-1400; and

(iii) Provided by a health professional who meets the requirements in subsection (2)(a), (b), and (d) of this section.

(5) Stage three - Presurgical requirements.

(a) To proceed to stage four gender reassignment surgery, the client must:

(i) Be age eighteen or older.

(ii) Be competent to give consent for treatment and have this competency documented in clinical records.

(iii) Undergo a comprehensive psychosocial evaluation that must do all of the following:

(A) Be conducted by two mental health professionals for genital surgery and one mental health professional for chest surgery. These mental health professionals must meet the qualifications described in subsection (2)(d) of this section.

(B) Confirm the diagnosis of gender dysphoria, document that professionals performing the evaluation believe the client is a good candidate for gender reassignment surgery, and document that surgery is the next reasonable step in the client's care.

(C) Evaluate the client for the presence of coexisting behavioral health conditions (substance abuse problems, or mental health illnesses), which could prevent the client from participating in gender dysphoria treatment including, but not limited to, gender reassignment surgery and postsurgical care.

(D) Document that any coexisting behavioral health condition is adequately managed.

(b) The surgeon who will perform the gender reassignment surgery and who meets the qualifications outlined in subsection (2)(a), (b), and (e) of this section, must complete a presurgical consultation. When the presurgical consultation is completed, the surgeon must forward the report of the consultation to the other treatment team members.

(c) The client must have received continuous hormonal therapy as required by the treatment plan to meet treatment objectives. For exceptions, see subsection (5)(f)(vi) of this section.

(d) The client must have lived in a gender role congruent with the client's gender identity immediately preceding surgery as required by the treatment plan to meet treatment objectives. For exceptions, see subsection (5)(f)(vi) of this section.

(e) The client's medical record must document that the client met the requirements in subsection (5)(a) through (d) of this section.

(f) A member of the treatment team must write a comprehensive referral letter and submit it to the agency along with the prior authorization request for surgery. The contents of the comprehensive referral letter must include:

(i) Results of the client's psychosocial evaluation, as described in subsection (5)(a)(iii) of this section;

(ii) Documentation that any coexisting behavioral health condition is adequately managed;

(iii) A description of the relationship between the mental health professionals and the client, including the duration of the professional relationship, and the type of evaluation and therapy or counseling to date;

(iv) A brief description of the clinical justification supporting the client's request for surgery;

(v) An assessment and attestation that the provider believes the client is able to comply with the postoperative requirements, has the capacity to maintain lifelong changes, and will comply with regular follow up;

(vi) An explanation that the criteria for surgery described in subsection (5)(a) through (d) of this section have been met. If the criteria are not met, the letter must describe the clinical decision-making process so that medical necessity can be established;

(vii) A statement about the client's adherence to the medical and mental health treatment plan, including keeping scheduled appointments;

(viii) A description of the outcome of the client's hormonal therapy;

(ix) A copy of the client's signed informed consent, acknowledging the permanent impact on their reproductive capacity;

(x) A statement that all the members of the treatment team will be available to coordinate or provide postoperative care as needed;

(xi) A description of the surgical plan. See subsection (6)(d) and (e) of this section, covered and noncovered procedures. The description must:

(A) List all surgical procedures planned; and

(B) Provide a timeline of surgical stages if clinically indicated; and

(xii) Signatures from the following treatment team members:

(A) The two mental health professionals for genital surgery and one mental health professional for chest surgery who completed the responsibilities described in subsections (4)(c) and (5)(a)(iii) of this section;

(B) The medical provider who has managed the care;

(C) Any surgeon performing the procedures; and

(D) The client.

(6) Stage four - Gender reassignment surgery.

(a) The agency requires prior authorization for stage four. Subsection (5) of this section lists the documentation that is required to be submitted with the authorization request.

(b) If the client fails to complete all of the requirements in subsection (5) of this section, the agency will not authorize gender reassignment surgery unless the clinical decision-making process is provided in the comprehensive referral letter described in subsection (5)(f) of this section.

(c) A client preparing for gender reassignment surgery must be cared for by a treatment team consisting of:

(i) One of the mental health professionals described in subsection (2)(d) of this section, if mental health services are part of the treatment plan;

(ii) The medical provider who managed the medical care in stage two and stage three; and

(iii) Any surgeon performing the procedures.

(d) The agency covers the following surgical procedures in stage four:

(i) Bilateral mastectomy;

(ii) Cliteroplasty;

(iii) Colovaginoplasty;

- (iv) Colpectomy;
 - (v) Genital surgery;
 - (vi) Genital electrolysis as required as part of the genital surgery;
 - (vii) Hysterectomy;
 - (viii) Labiaplasty;
 - (ix) Metoidioplasty;
 - (x) Orchiectomy;
 - (xi) Penectomy;
 - (xii) Phalloplasty;
 - (xiii) Placement of testicular prosthesis;
 - (xiv) Salpingo-oophorectomy;
 - (xv) Scrotoplasty;
 - (xvi) Urethroplasty;
 - (xvii) Vaginectomy; and
 - (xviii) Vaginoplasty.
- (e) The agency does not cover the following surgical procedures in stage four:
- (i) Abdominoplasty;
 - (ii) Blepharoplasty;
 - (iii) Breast augmentation;
 - (iv) Brow lift;
 - (v) Calf implants;
 - (vi) Cheek/malar implants;
 - (vii) Chin/nose implants;
 - (viii) Collagen injections;
 - (ix) Drugs for hair loss or growth;
 - (x) Facial or trunk electrolysis, except for the limited electrolysis described in subsection (6)(d)(vi) of this section;
 - (xi) Facial feminization;
 - (xii) Face lift;
 - (xiii) Forehead lift;
 - (xiv) Hair transplantation;
 - (xv) Jaw shortening;
 - (xvi) Laryngoplasty;
 - (xvii) Lip reduction;
 - (xviii) Liposuction;
 - (xix) Mastopexy;
 - (xx) Neck tightening;
 - (xxi) Pectoral implants;
 - (xxii) Reduction thyroid chondroplasty;
 - (xxiii) Removal of redundant skin;
 - (xxiv) Rhinoplasty;
 - (xxv) Suction-assisted lipoplasty of the waist;
 - (xxvi) Trachea shave;
 - (xxvii) Voice modification surgery; and
 - (xxviii) Voice therapy.