

WSR 21-17-032
PERMANENT RULES
STATE BOARD FOR COMMUNITY
AND TECHNICAL COLLEGES

[Filed August 9, 2021, 1:18 p.m., effective September 9, 2021]

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

Purpose: Tuition charges for certain ungraded courses. Amends the section to align [align] with WAC revisions submitted and adopted in 2013 as a result of SHB 1686 removing the term GED and federal Workforce Innovation and Opportunity Act, modifies the English as a second language term to English acquisitions.

Citation of Rules Affected by this Order: Amending WAC 131-28-026.

Statutory Authority for Adoption: Chapter 28.50 RCW.

Adopted under notice filed as WSR 21-12-021 on May 24, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 3, 2021.

Beth Gordan
Executive Assistant

AMENDATORY SECTION (Amending WSR 16-02-087, filed 1/5/16, effective 2/5/16)

WAC 131-28-026 Tuition charges for certain ungraded courses. (1) The state board shall designate ungraded courses. These courses may be offered at tuition rates that differ from the standard rates set by WAC 131-28-025. Ungraded shall mean courses not categorized by level of instruction and may be assigned degree credit or letter grades.

(2) Ungraded courses shall meet the following qualifications:

(a) The course has a specialized purpose in that it is intended to meet the unique educational needs of a specific category or group of students.

(b) The course is offered for the purpose of providing the individual student with a discrete skill or basic body of knowledge that is intended to enhance potential for initial or continued employment, parenting skills or retirement.

(c) The course cannot be administered as a contract course pursuant to WAC 131-28-027, 131-32-010, or 131-32-020.

(d) The course is not one specifically or primarily intended to satisfy requirements for receiving a high school diploma.

(3) Colleges may establish the amount of waiver for the following ungraded courses:

(a) Farm management and small business management;

(b) Emergency medical technician and paramedic continuing education;

(c) Retirement;

(d) Industrial first aid offered to satisfy WISHA and approved by the department of labor and industries;

(e) Journey person training in cooperation with joint apprenticeship and training committees;

(f) Parenting education including, but not limited to, cooperative preschool programs.

(4) The waiver amounts for the following ungraded courses shall conform with the following schedule:

(a) Adult basic education, English ((~~as a second~~) language(~~(-GED preparation)~~) acquisition, high school equivalency test: An amount to be established by the state board.

(b) Courses offered for the purpose of satisfying related or supplemental educational requirements for apprentices registered with the Washington state apprenticeship council or federal Bureau of Apprenticeship and Training: A college shall waive one-half of the standard per credit tuition and services and activities fee. The college may convert the credit hour charge to a rounded amount per clock hour. Colleges may deduct the tuition owed from training contracts with apprentice organizations.

(5) Students taking both regular and ungraded courses will be charged separately for the courses.

(6) Application of this section shall be subject to administrative procedures established by the state director with respect to maximum credit values of such ungraded courses, curriculum, or any unique circumstances related to enrollment in such courses.

(7) Ungraded course fees received pursuant to this section shall be accounted for and deposited in local college operating fee accounts established in RCW 28B.15.031.

(8) Ungraded course fees may be paid by the sponsoring entity rather than an individual student.

WSR 21-17-033
PERMANENT RULES
STATE BOARD FOR COMMUNITY
AND TECHNICAL COLLEGES

[Filed August 9, 2021, 1:25 p.m., effective September 9, 2021]

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

Purpose: Tuition and fees for students who demonstrate financial needs. Amends to meet financial aid terminology changes as a result of ESSHB 22158 [E2SHB 2158] (2019 session). No anticipated effects to rules other than terminology changes.

Citation of Rules Affected by this Order: Amending WAC 131-28-028 [131-28-030, 131-28-040, and 131-28-045].

Statutory Authority for Adoption: Chapter 28.50 RCW.

Adopted under notice filed as WSR 21-12-022 on May 24, 2021.

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

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

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

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

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

Date Adopted: August 3, 2021.

Beth Gordan
Executive Assistant

AMENDATORY SECTION (Amending WSR 16-02-087, filed 1/5/16, effective 2/5/16)

WAC 131-28-030 Waiver of tuition and fees for ~~((needy or disadvantaged))~~ students who demonstrate financial need. Pursuant to authority granted by RCW 28B.15.740, the boards of trustees of community and technical college districts are authorized to waive all or part of tuition and services and activities fees for ~~((needy))~~ students who demonstrate financial need: Provided, That the students shall qualify for such waiver under criteria set forth in WAC 131-28-040 through 131-28-045.

AMENDATORY SECTION (Amending WSR 95-13-070, filed 6/20/95, effective 7/21/95)

WAC 131-28-040 Criteria for determining eligibility for waiver of tuition and fees under RCW 28B.15.740. Waiver of tuition and services and activities fees under RCW 28B.15.740(1) shall be based upon the determination that the student ~~((is a "needy student"))~~ demonstrates financial need under a method of need analysis approved by the United States Department of Education for determining awards for federal student financial aid programs or a method adopted by the state board specifically for the purposes of this section, except as provided in WAC 131-28-045.

AMENDATORY SECTION (Amending WSR 16-02-087, filed 1/5/16, effective 2/5/16)

WAC 131-28-045 Procedure for implementing tuition and fee waivers authorized pursuant to RCW 28B.15.740. (1) Community and technical colleges may waive the tuition and service and activities fees for ~~((needy))~~ resident students who demonstrate financial need under the provisions of RCW 28B.15.740. The amount that can be waived under this provision is limited by the waiver limits set forth in RCW 28B.15.910.

(2) In addition, colleges may waive up to three-quarters of one percent of the estimated gross collection of tuition and service and activities fees for other students. These waivers are not to be awarded based on participation in intercollegiate athletics. The estimated gross collection of tuition and service and activities fees shall be based on budgeted, state supported, annual average enrollment, after deducting the portion of the gross amount which is attributed to the difference between resident and nonresident tuition and fees.

WSR 21-17-035

PERMANENT RULES

STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed August 9, 2021, 1:55 p.m., effective September 9, 2021]

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

Purpose: Institutional financial aid. Amending to meet financial aid terminology changes as a result of ESSHB [E2SHB] 2158 (2019 session). No anticipated effects to rules, other than terminology changes.

Citation of Rules Affected by this Order: Amending WAC 131-28-036 [131-36-050, 131-36-055, and 131-36-100].

Statutory Authority for Adoption: Chapter 28.50 RCW.

Adopted under notice filed as WSR 21-12-023 on May 24, 2021.

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

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

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

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

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

Date Adopted: August 3, 2021.

Beth Gordan
Executive Assistant

AMENDATORY SECTION (Amending WSR 16-11-016, filed 5/6/16, effective 6/6/16)

WAC 131-36-050 Definitions. For the purposes of chapter 131-36 WAC, the following definitions shall apply:

(1) "Fund" shall mean the institutional financial aid fund established by RCW 28B.15.820.

(2) "Current federal methodology" shall mean the method of determining financial need as prescribed by the United States Department of Education.

(3) "Loan guarantor" shall mean the Washington student loan guaranty association or its successor agency authorized to guarantee educational loans in Washington granted pursuant to 20 U.S. Code Section 1071.

(4) "Operational" shall mean that the institution has been approved as a lender and is eligible to provide loans guaranteed by the Washington student loan guaranty association successor agency.

(5) "~~(Needy)~~ Eligible student" is defined in RCW 28B.92.030(3).

(6) "Other institutional financial aid" shall be defined as locally administered, need-based institutional employment, tuition and fee scholarships, or grants.

AMENDATORY SECTION (Amending WSR 16-11-016, filed 5/6/16, effective 6/6/16)

WAC 131-36-055 Use of fund. Moneys in this fund shall be used for student financial aid:

- (1) Long-term loans;
- (2) Short-term loans; or

(3) Locally administered need-based grants, tuition scholarships and institutional employment programs for ~~((needy,))~~ resident students who demonstrate financial need, or a financial aid program for high school students enrolled in a dual credit program to cover expenses including, but not limited to, tuition, fees, course materials, and transportation. The moneys in this fund shall not be used for college operating expenses.

AMENDATORY SECTION (Amending WSR 16-11-016, filed 5/6/16, effective 6/6/16)

WAC 131-36-100 Eligibility. (1) Long-term loans and other institutional financial aid to ~~((needy))~~ students who demonstrate financial need shall be made only to students who qualify as residents for tuition purposes under RCW 28B.15.012 (2)(a) through (e) or to align with federal guidelines and are enrolled for at least three credit hours of instruction or the equivalent.

(2) Priorities for use of other institutional financial aid shall be given to:

(a) ~~((Needy))~~ Students who have accumulated excessive educational loan burdens;

(b) ~~((Needy))~~ Single parents who are students with demonstrated financial need for educational expenses, including child care and transportation;

(c) Other eligible ~~((needy))~~ students who demonstrate financial need; and

(d) ~~((Needy dual credit))~~ Enrolled dual credit students who demonstrate financial need for tuition, fees, course materials, and transportation.

(3) Short-term loans may be made to any student enrolled in the institution.

(4) For long-term and short-term loans, institutions must have ample evidence that students have the capability of repaying the loan within the time frame specified by the institution.

(5) No individual shall be eligible for long-term loans, short-term loans or other institutional financial aid for ~~((needy))~~ students who demonstrate financial need if cur-

rently in default or delinquent in the payment on any educational loan or who owes a repayment on any federal or state grant.

WSR 21-17-037

PERMANENT RULES

STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed August 9, 2021, 2:04 p.m., effective September 9, 2021]

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

Purpose: Project even start, removing chapter 131-47 WAC; no other changes or impact to existing rules.

Citation of Rules Affected by this Order: Amending WAC 131-28-047 [Repealing chapter 131-47 WAC].

Statutory Authority for Adoption: Chapter 28.50 RCW.

Adopted under notice filed as WSR 21-12-024 on May 24, 2021.

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

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

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

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

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

Date Adopted: August 3, 2021.

Beth Gordan
Executive Assistant

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 131-47-010 Authority.

WAC 131-47-015 Purpose.

WAC 131-47-020 Public policy goals of project even start.

WAC 131-47-025 Project even start—Definition.

WAC 131-47-030 Child development knowledge—Definition.

WAC 131-47-035 Other eligible program components—Definition.

WAC 131-47-040 Eligible grantee—Definition.

WAC 131-47-045 Eligible parents—Definition.

WAC 131-47-050 Basic skills—Definition.

- WAC 131-47-055 Standardized test—Definition.
 WAC 131-47-060 Transportation—Definition.
 WAC 131-47-065 Child care—Definition.
 WAC 131-47-070 Directly necessary activities—Definition.
 WAC 131-47-075 Indirect expenditures—Definition.
 WAC 131-47-080 Assurance of nonsupplanting—Program standard.
 WAC 131-47-085 Assurance of cooperation with the department of social and health services regarding public assistance reports—Program standard.
 WAC 131-47-090 Assurance to submit annual evaluation report to the state board for community and technical colleges.
 WAC 131-47-095 Reporting requirements.
 WAC 131-47-100 Request for even start project grants to the state board for community and technical colleges.
 WAC 131-47-105 Assurance of cooperation with state auditor.
 WAC 131-47-110 Assurance of service to targeted groups.
 WAC 131-47-125 Even start advisory committee.
 WAC 131-47-130 Duties of even start advisory committee.
 WAC 131-47-135 Preference for existing programs before developing new programs.
 WAC 131-47-140 Coordination of programs.
 WAC 131-47-145 Evaluation criteria for project even start.
 WAC 131-47-150 Performance standards for project even start.
 WAC 131-47-155 Administrative expenditures.
 WAC 131-47-160 Liability insurance.
 WAC 131-47-165 Bonding.

WSR 21-17-038**PERMANENT RULES****STATE BOARD FOR COMMUNITY
AND TECHNICAL COLLEGES**

[Filed August 9, 2021, 2:08 p.m., effective September 9, 2021]

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

Purpose: Regulations for the administration of the displaced homemaker program. Removing chapter 131-49 WAC; no impact or changes to other existing rules.

Citation of Rules Affected by this Order: Amending WAC 131-28-049 [Repealing chapter 131-49 WAC].

Statutory Authority for Adoption: Chapter 28.50 RCW.

Adopted under notice filed as WSR 21-12-025 on May 24, 2021.

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

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

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

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

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

Date Adopted: August 3, 2021.

Beth Gordan
Executive Assistant

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 131-49-010 Purpose.
 WAC 131-49-020 Program administration.
 WAC 131-49-030 Advisory committee.
 WAC 131-49-040 Definitions.
 WAC 131-49-050 Utilization of available contract funds.
 WAC 131-49-060 Eligibility to apply for contracts.
 WAC 131-49-070 Calendar and closing dates for applications and awards.
 WAC 131-49-080 Content of application.
 WAC 131-49-090 Standards to be met by applicants.
 WAC 131-49-100 Required assurances.
 WAC 131-49-110 Criteria for selection of contracts to be awarded.
 WAC 131-49-120 Procedure for selection of contracts to be awarded.
 WAC 131-49-130 Incorporation of applications in contracts.
 WAC 131-49-140 Length of contract periods.
 WAC 131-49-150 Amendment of contracts.
 WAC 131-49-160 Eligible expenditures and matching requirements.
 WAC 131-49-170 Payments under approved contracts.
 WAC 131-49-180 Withholding of contract payments.
 WAC 131-49-190 Accounting, reporting, and records retention requirements.
 WAC 131-49-200 Program audits.

WSR 21-17-054
PERMANENT RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed August 10, 2021, 1:37 p.m., effective September 10, 2021]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-19 issue of the Register.

WSR 21-17-056
PERMANENT RULES
CLOVER PARK
TECHNICAL COLLEGE

[Filed August 10, 2021, 2:00 p.m., effective September 10, 2021]

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

Purpose: To adopt new Title IX grievance procedures as mandated by the United States Department of Education.

Citation of Rules Affected by this Order: New 7; repealing 1; and amending 1.

Statutory Authority for Adoption: RCW 28B.50.140; WSR 14-11-070; United States Department [of] Education 34 C.F.R. Part 106; Chapter 495C-121 WAC.

Adopted under notice filed as WSR 21-10-031 on April 27, 2021.

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

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

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

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

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

Date Adopted: July 15, 2021.

Dean Kelly
 Dean of Student Success

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-210 Supplemental sexual misconduct procedures. ~~((In student discipline matters involving allegations of sexual misconduct by a student:~~

~~(1) Both the respondent and the complainant shall be provided the same, or substantially equivalent, procedural rights to participate. For the complainant, this includes the rights to meet with the student conduct officer during the initial disciplinary process under WAC 495C-121-100 and to appeal as provided in WAC 495C-121-230.~~

~~(2) These rules shall supplement the foregoing student disciplinary rules in WAC 495C-121-010 through 495C-121-190. In the event of conflict between these supplemental sexual misconduct rules and the foregoing rules, these supplemental rules shall prevail.)) Pursuant to RCW 28B.50.140 (13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Clover Park Technical College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of sexual misconduct. The supplemental procedures provided for in WAC 495C-121-210 through 495C-121-270 shall supplement the other procedural requirements of this chapter and will govern all student conduct proceedings regarding alleged acts of sexual misconduct. In the event of a conflict between the supplemental procedure and other requirements of this chapter, the requirements of the supplemental procedure shall control.~~

~~For purposes of this supplemental procedure, "sexual misconduct" encompasses the following conduct:~~

~~(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.~~

~~(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Clover Park Technical College's educational programs or activities, or employment.~~

~~(3) Sexual assault. Sexual assault includes the following conduct:~~

~~(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.~~

~~(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.~~

~~(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.~~

~~(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.~~

~~(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or~~

family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

NEW SECTION

WAC 495C-121-215 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Clover Park Technical College educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Clover Park Technical College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section, have not been met. Dismissal under this Title IX supplemental procedure does not prohibit the college from pursuing other disciplinary action based on in situations where the allegations against the respondent, if true, would constitute violations of other provisions of the college's student conduct code, chapter 495C-121 WAC.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

AMENDATORY SECTION (Amending WSR 14-11-070, filed 5/19/14, effective 6/19/14)

WAC 495C-121-220 Supplemental complaint process. With respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX compliance officer shall investigate, or assure investigation of, complaints or other reports of alleged sexual misconduct by a student. The investigation

will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for possible disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue the mediation at any time. Mediation shall not be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process such complaints.

~~((4) The student conduct officer, prior to serving a disciplinary decision under WAC 495C-121-100, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or disciplinary conditions that may be imposed.~~

~~(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent under WAC 495C-121-100, will serve a written notice, in compliance with FERPA, informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions which are being imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of her/his rights to appeal as stated in WAC 495C-121-230. If protective disciplinary sanctions and/or conditions are imposed, the student conduct officer shall also make a reasonable effort to have the notice served upon the complainant prior to service upon the respondent.))~~

NEW SECTION

WAC 495C-121-225 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX compliance officer, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

- (ii) An advisor may be an attorney; and
 - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 495C-121-235 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 495C-121-150. In no event will the hearing date be set less than ten days after the Title IX compliance officer provides the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 495C-121-240 Rights of parties. (1) Clover Park Technical College's student conduct procedures, chapter 495C-121 WAC, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX compliance officer will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 495C-121-250 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The chair of the student conduct committee shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 495C-121-260 Initial order. (1) In addition to complying with chapter 495C-121 WAC, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Clover Park Technical College's educational programs or activities; and

(h) Describes the process for appealing the initial order to the college president.

(2) The chair of the student conduct committee will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 495C-121-270 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495C-121-080.

(2) The president or designee will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 495C-121-230 Supplemental appeal rights.

WSR 21-17-062**PERMANENT RULES****DEPARTMENT OF HEALTH**

[Filed August 11, 2021, 11:10 a.m., effective September 11, 2021]

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

Purpose: WAC 246-945-014 Electronic prescribing mandate waiver. The pharmacy quality assurance commission (commission) and the department of health (department) have jointly adopted a new section of rule to outline the electronic prescribing mandate, exceptions allowing a waiver, and related waiver process as required by SSB 5380 passed during the 2019 legislative session.

Citation of Rules Affected by this Order: New WAC 246-945-014.

Statutory Authority for Adoption: RCW 69.50.312; SSB 5380 (chapter 314, Laws of 2019).

Adopted under notice filed as WSR 21-08-059 on April 5, 2021.

Changes Other than Editing from Proposed to Adopted Version: The department and commission made three non-substantive edits to the proposed rule as a result of the public hearing. First, in subsection (3)(a)(iii) "December 31, 2021" was changed to "December 31, 2022." The rules were originally drafted prior to the onset of the COVID-19 pandemic and the resulting waiver issued by the secretary of health to help relieve pressure on the health care system during the pandemic response. Staff updated this language to align with the expiration of the secretary's waiver. Without making this change, the economic hardship criteria under subsection (3)(a)(iii) would expire before the department expects compliance.

The second change from the proposed to adopted version is in subsection (3)(c). After "circumstances" staff added the word "include." This is a clarifying edit that structurally

aligns that clause with the other clauses in this section and makes clear the department and commission's intent that subsection (3)(c) is an exhaustive list.

Finally, the third change is in subsection (4). In response to comments from interested parties, the department and commission added the word "knowingly" prior to "submitting a false attestation is grounds ..." This addition clarifies that the department and licensing boards and commissions will only pursue disciplinary action against a provider for noncompliance with RCW 69.50.312 and WAC 246-945-014 if the practitioner knowingly submits a false attestation.

A final cost-benefit analysis is available by contacting Lindsay Trant, P.O. Box 47890, Olympia, WA 98504-7890, phone 360-236-2932, TTY 711, email pharmacyrules@doh.wa.gov.

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

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

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

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

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

Date Adopted: June 4, 2021.

Kristin Peterson, JD

Deputy Secretary, Policy and Planning

for Umair A. Shah, MD, MPH/Teri Ferreira, RPH
Secretary/Pharmacy Quality Assurance Commission Chair

NEW SECTION

WAC 246-945-014 Electronic prescribing mandate waiver. (1) A practitioner may submit an attestation to the department for a waiver from the electronic prescribing mandate in RCW 69.50.312, if the practitioner is experiencing an economic hardship, technological limitations not reasonably in the control of the practitioner, or other exceptional circumstance. A practitioner does not need to submit a waiver if exempted from the mandate under RCW 69.50.312 (2)(a) through (j). A practitioner must submit an attestation for the waiver using forms provided by the department. The department shall deem the waiver granted upon submission of an attestation and the practitioner will be deemed exempt under RCW 69.50.312 (2)(k).

(2) A practitioner who has submitted an attestation for a waiver from the mandate in RCW 69.50.312 is exempt from the electronic prescribing mandate for the calendar year in which the attestation is signed, beginning with the effective date of this section.

(a) For economic hardship and technical limitations, a practitioner may attest to the need for a waiver up to three

times, giving the practitioner three years to come into compliance with the mandate.

(b) There is no limit on the number of other exceptional circumstance waivers under subsection (3)(c) of this section that a practitioner can submit.

(3) A practitioner required to electronically prescribe under RCW 69.50.312 may submit an attestation for a waiver from this mandate due to:

(a) Economic hardship in the following circumstances:

(i) A bankruptcy in the previous year or submitted an attestation for a waiver under this chapter due to a bankruptcy in the previous year;

(ii) Opening a new practice after January 1, 2020;

(iii) Intent to discontinue operating in Washington prior to December 31, 2022; or

(iv) Operating a low-income clinic, that is defined as a clinic serving a minimum of thirty percent medicaid patients.

(b) Technological limitations outside the control of the practitioner if the practitioner is in the process of transitioning to an electronic prescription system.

(c) Other exceptional circumstances include:

(i) The practitioner is providing services at a free clinic;

(ii) The practitioner generates fewer than one hundred prescriptions of Schedules II through V drugs in a one-year period, including both new and refill prescriptions;

(iii) The practitioner is located in an area without sufficient internet access to comply with the e-prescribing mandate; or

(iv) Unforeseen circumstances that stress the practitioner or health care system in such a way that compliance is not possible. Examples may include, but are not limited to, natural disasters, widespread health care emergencies, unforeseeable barriers to electronic prescribing, or unforeseen events that result in a statewide emergency.

(4) The department may audit waiver attestations submitted by a practitioner to determine compliance with this chapter. Knowingly submitting a false attestation is grounds for disciplinary action against a practitioner's license by the appropriate disciplinary authority as well as fines pursuant to RCW 69.50.312(5).

WSR 21-17-069

PERMANENT RULES

ENVIRONMENTAL AND

LAND USE HEARINGS OFFICE

[Filed August 12, 2021, 8:11 a.m., effective September 12, 2021]

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

Purpose: Changes to chapter 242-03 WAC, procedural rules for the growth management hearings board.

Citation of Rules Affected by this Order: Amending chapter 242-03 WAC.

Statutory Authority for Adoption: RCW 36.70A.270(7).

Adopted under notice filed as WSR 21-13-097 on June 18, 2021.

Changes Other than Editing from Proposed to Adopted Version: Added a provision for dispositive motions in WAC

242-03-555 and added a provision about including maps as exhibits to briefs in WAC 242-03-590.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 22, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 22, Repealed 0.

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

Date Adopted: August 11, 2021.

Nina Carter
Director

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-010 Organization. The growth management hearings board was established pursuant to chapter 36.70A RCW. The board is an independent quasi-judicial agency of the state of Washington with ~~((seven))~~ five members appointed by the governor who are qualified by experience or training in matters pertaining to land use planning. These rules were developed, adopted, and amended by the board pursuant to RCW 36.70A.270(7). They should be read in conjunction with the act and the Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 13-01-026, filed 12/11/12, effective 1/11/13)

WAC 242-03-015 Regional panels. (1) Each petition for review that is filed with the growth management hearings board shall be heard and decided by a regional panel of growth management hearings board members. From the ~~((seven))~~ five board members, regional panels shall be constituted as follows:

(a) Central Puget Sound region. A three-member Central Puget Sound panel shall be selected to hear matters pertaining to cities and counties located within the region comprised of King, Pierce, Snohomish, and Kitsap counties.

(b) Eastern Washington region. A three-member Eastern Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains.

(c) Western Washington region. A three-member Western Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040, are located west of the crest of the Cascade mountains, and are not included in the Central Puget Sound region. Skamania County, if it is required or

chooses to plan under RCW 36.70A.040, may elect to be included within either the Western Washington region or the Eastern Washington region.

(2)(a) Each regional panel selected to hear and decide cases shall consist of three board members, at least a majority of whom shall reside within the region in which the case arose, unless such regional members cannot sit on a particular case because of recusal or disqualification, or unless the board (~~administrative officer~~) chair determines (~~that there is an emergency including, but not limited to,~~) otherwise due to caseload management determinations or the unavailability of a board member due to illness, absence, or vacancy (~~or significant workload imbalance~~).

(b) The presiding officer of each case shall reside within the region in which the case arose, unless the board (~~administrative officer~~) chair determines that there is an emergency.

(c) Except as provided otherwise in (d) of this subsection, each regional panel shall:

(i) Include at least one member admitted to practice law in this state;

(ii) Include at least one member who has been a city or county elected official; and

(iii) Reflect the political composition of the board.

(d) The requirements of (c) of this subsection may be waived by the board (~~administrative officer~~) chair due to member unavailability, significant workload imbalances, or other reasons.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-030 Definitions. As used in this title, the following terms shall have the following meaning:

(1) "Act" means the Growth Management Act, chapter 36.70A RCW, and subsequent amendments.

(2) (~~"Administrative officer" means the board member annually elected by the board pursuant to RCW 36.70A.270 (10) to handle day to day administrative, budget and personnel matters on behalf of the board and to make case assignments to board members in accordance with the board's rules of procedure.~~

(~~3~~) "Board" means the growth management hearings board or a panel of the board hearing a matter as established in RCW 36.70A.260.

(3) "Chair" means the board member annually elected by the board pursuant to RCW 36.70A.270(11). The duties and responsibilities of the chair include, developing board procedures, making case assignments to board members in accordance with the board's rules of procedure in order to achieve a fair and balanced workload among all board members, and managing board meetings.

(4) "Compliance participant" means any person with standing to challenge legislation taken in response to a board order, as provided in RCW 36.70A.330(2).

(5) "Consolidation" means the combining of all petitions involving review of the same comprehensive plan or development regulation into a single case for hearing and decision, as provided in RCW 36.70A.290(5).

(6) "Coordination" means provision of parallel case schedules for cases involving related matters in the interest of

efficient resolution and to avoid duplication of evidence and argument.

(7) "Environmental and land use hearings office" means the administrative office of the board established pursuant to RCW 36.70A.252.

(8) "Ex parte communication" is communication about issues in a pending case between a party and a board member without including or providing notice to all other parties to the matter. Ex parte communication is prohibited.

(~~(8)~~) (9) "Filing" of a document means actual receipt by the board during regular office hours, as specified in WAC 242-03-230 (for a petition for review) or WAC 242-03-240 (for all other documents).

(~~(9)~~) (10) "Final decision" means:

(a) Any final order as provided in RCW 36.70A.300; or

(b) Any other written finding, determination or order of the board which finally determines a legal right, duty, or other legal interest of the parties in the case and which clearly states in such written finding, determination or order that it is a final decision subject to appeal to superior court.

(~~(10)~~) "~~Office of the growth management hearings board~~" means ~~the administrative office of the board established pursuant to RCW 36.70A.270(2).~~

(11) "Panel" means the three board members assigned to hear and decide a particular case pursuant to RCW 36.70A.-260.

(12) "Party" means the petitioner(s) and respondent(s) in a case before the board and, if admitted in the case, intervenor(s), amicus, and compliance participant(s).

(13) "Person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit, or public or private organization or entity of any character.

(14) "Petitioner" means a person who files a petition for review pursuant to RCW 36.70A.290 or who brings a petition for rule making to the board.

(15) "Presiding officer" means any member of the board who is designated to conduct a conference or hearing as directed by the board. The presiding officer shall be designated pursuant to WAC 242-03-525 and have authority as provided by WAC 242-03-530.

(16) "Publication" means:

(a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is required to be published, or the date the department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of the department of ecology;

(b) For a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations, or subsequent amendment pursuant to RCW 36.70A.-290(2), or the date the department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of the department of ecology.

(17) "Respondent" means the city, county, or state agency whose action is challenged in a petition for review before the board.

(18) "Service" of a document means delivery of the document to the other parties to the appeal, as specified in WAC 242-03-230 (for the petition for review) or WAC 242-03-240 (for all other documents).

(19) "Shoreline master program" means the comprehensive use plan for a described shoreline area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies in RCW 90.58.020 and applicable guidelines. Pursuant to RCW 36.70A.480(1), an approved shoreline master program is a component of the city or county's comprehensive plan and development regulations.

(20) "Shoreline Management Act" means chapter 90.58 RCW and subsequent amendments.

(21) "State Environmental Policy Act" means chapter 43.21C RCW and subsequent amendments.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-035 Rules. These rules shall govern the board's adoption or amendment of rules, and all practice and procedure for hearings before the board. ~~((Where a time frame is different in these rules from those in chapter 10-08 WAC, it is because the board is required to act pursuant to the time frames set forth in the act.))~~

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-050 Quorum. (1) Board quorum. For the purpose of adopting, amending, or repealing these rules or transacting other administrative business, at least ~~((four))~~ three members of the board shall constitute a quorum of the board. A quorum being present, any action may be taken upon the vote of the majority of the board members.

(2) Panel quorum. For purposes of making orders or decisions in a case, two members of a panel shall constitute a quorum and may act even though one panel member is absent. One member may hold conferences or hearings. The findings of such member shall not become final until approved by a majority of the panel. A panel member who does not attend a hearing may participate in the decision and shall review a transcript or recording of the hearing before signing the decision.

AMENDATORY SECTION (Amending WSR 13-01-026, filed 12/11/12, effective 1/11/13)

WAC 242-03-060 Board office. (1) The administration of the board is consolidated in one office - The ~~((office of the growth management hearings))~~ environmental and land use hearings office. All correspondence shall be mailed to the physical address of the board:

Growth Management Hearings Board
c/o Environmental and Land Use Hearings Office
1111 Israel Road S.W., Suite 301
Tumwater, WA 98501
P.O. Box ~~((40953))~~ 40903

Olympia, WA 98504-0953
website: www.eluho.wa.gov
~~((360-664-9170))~~

ELUHO Main Office: 360-664-9160

Fax: 360-586-2253 ((Fax))

Regional Email Inboxes

email: eastern@eluho.wa.gov

email: western@eluho.wa.gov

email: central@eluho.wa.gov

~~((web site: www.gmhb.wa.gov))~~

(2) The filing of all petitions, briefs, exhibits, and other documents related to any proceeding before a regional panel shall be made to the ~~((office of the growth management hearings board, with specific indication of))~~ board, through its administrative office, the environmental and land use hearings office. However, each filing must be sent to the appropriate regional panel email inbox and must indicate the appropriate regional panel's name - Eastern, Western, or Central Puget Sound.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-075 Special meeting. (1) A special meeting of the board may be called at the request of any two of the board members. To call a special meeting, a written notice of the meeting shall be posted on the board's website, prominently displayed on the main entrance of the board's principal office location and personally emailed to:

(a) Each member of the board; and

(b) Each general circulation newspaper, television or radio station which has on file with the board a written request to be notified of special meetings.

(2) The written notice shall state the date and time of the meeting, and shall specify the business to be transacted by the board. The board will not take final action on any matter that is not specified in the written notice.

(3) Notices of special meetings shall be sent by email:

(a) One day (twenty-four hours) before the scheduled meeting; except

(b) When a special meeting is called to consider rule changes pursuant to chapter 34.05 RCW, the notice shall be sent at least twenty days prior to the meeting; and except

(c) In the event of an emergency requiring board action, the notice and timing requirements may be waived as provided in RCW 42.30.080.

(4) The special meeting shall be chaired by the ~~((administrative officer))~~ board chair.

(5) A special meeting may be held by telephone conference call or other remote meeting systems. During a remote meeting, members of the board may appear or attend by phone or by other electronic means that allows real-time verbal communication without being in the same physical location.

(6) Members of the public may attend a special meeting by appearing at the board office, or the location of the special meeting, or online if held via electronic remote meeting device at the date and time set for the meeting.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-145 Form and size of documents. Documents (~~(, other than exhibits,)~~) shall be provided in the manner indicated in the board's prehearing order.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-210 Petition for review—Forms—Contents. A petition for review shall substantially contain:

(1) A caption in the following form:

BEFORE THE GROWTH MANAGEMENT
HEARINGS BOARD
_____ REGION
STATE OF WASHINGTON

Petitioner,	Case No.
v.	
Respondent.	PETITION FOR REVIEW

(2) Numbered paragraphs stating:

(a) Petitioner's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other authorized representative, if any;

(b) Date of the challenged order, determination, publication, or other action or, in the case of an alleged failure to act under the Growth Management Act or the Shoreline Management Act, the date by which the action was required to be taken;

(c) A detailed and concise statement of the issues presented for resolution by the board (~~((that specifies))~~). Each issue statement should not exceed seventy-five words and shall specify the provision(s) of the act or other statute allegedly being violated and, if applicable, the provision(s) of the document that is being appealed;

(d) A statement specifying the type and the basis of the petitioner's standing before the board pursuant to RCW 36.70A.280(2);

(e) The relief sought, including the specific nature and extent;

(f) A statement that the petitioner has read the petition for review and believes the contents to be true, followed by the petitioner's signature or signature of the attorney(s) or other authorized representative(s), if any.

(3) One copy of the applicable (~~((provisions of the document being appealed, if any,))~~) ordinance, resolution, or other official action being appealed shall be attached to the petition for review. (~~((Petitioner shall provide the board with a copy of the entire document being appealed within thirty days of filing a petition for review, unless otherwise directed by the board.))~~)

AMENDATORY SECTION (Amending WSR 16-02-114, filed 1/6/16, effective 2/6/16)

WAC 242-03-240 Filing and service of all other papers. (1) Filing of papers: All pleadings and briefs shall be

filed with the board by electronic mail unless a petitioner does not have the technological capacity to do so. The original and three copies of all documents shall be filed with the board personally, or by mail or commercial parcel delivery service and must be postmarked or sent on the same date as the electronic filing. Filings less than fifteen pages may be made by fax transmission. The original and three copies must be postmarked or sent on the same date as the fax transmission to be deemed filed.

Filings made by electronic mail and/or fax transmission shall be deemed filed upon actual receipt during office hours of 8:00 a.m. to 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's fax machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission. All papers will be deemed filed with the board on the date received by electronic mail provided that the original document and three copies are postmarked or commercially sent on the same date as the fax transmission or electronic mail filing. See WAC 242-03-060 for contact information.

(2) Service: Parties shall serve copies of all filings on all other named parties by electronic mail, on or before the date filed with the board, unless a party lacks technical capability. Service is accomplished when the document is transmitted electronically, or, by agreement among the parties or exception granted by the presiding officer, is postmarked or commercially sent by the required date.

(3) Filing and service requirements may be altered in emergency situations, in which the governor declares a state-wide emergency.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-550 Motions—General requirements.

(1) A motion is an application for an order or ruling. Every motion shall be filed separately in writing, and not contained within a brief, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought.

(2) The deadline for filing certain motions is established in the prehearing order. No written motion may be filed after the date specified in the order without written permission of the presiding officer which may be granted for good cause shown.

(3) Unless the prehearing order or other order in the case establishes a different deadline, a party served with a motion shall have ten days from the date of service of the motion to respond to it. The presiding officer may allow the moving party to reply to the response.

(4) A party filing a motion on a routine matter is encouraged to inform other parties and to indicate in the motion whether it is filed with the concurrence of other parties.

(5) A motion on procedural matters will generally be decided by the presiding officer without a hearing.

(6) The presiding officer, taking into consideration the complexity and finality of the issues raised in a motion, may, in the officer's discretion, schedule a telephonic hearing for

argument of the motion to the board or may defer consideration of the motion until the hearing on the merits.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-555 Dispositive motions. (1) Dispositive motions on a limited record to determine the board's jurisdiction, the standing of a petitioner, or the timeliness of the petition are permitted. The board rarely entertains a motion for summary judgment except in a case of failure to act by a statutory deadline or a procedural challenge to the State Environmental Policy Act (SEPA) compliance.

(2) Dispositive motions and responses shall be filed by the dates established in the prehearing order. The board may refuse to hear a motion that is not timely filed, except where good cause is shown.

(3) The presiding officer, taking into consideration the complexity and finality of the issues raised, may, in the presiding officer's discretion, request a reply brief from the moving party, schedule a telephonic hearing for argument of the motion or may defer the board's consideration of the motion until the hearing on the merits.

(4) Unless the order on dispositive motions is a final order pursuant to WAC 242-03-030(9), no motion for reconsideration will be allowed.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-570 Motion to disqualify for cause—Challenge to panel. (1) A motion to disqualify a board member from serving on a panel or to challenge the composition of the panel shall be brought at least seven days before the board holds a prehearing conference, or if facts establishing grounds for disqualification are subsequently discovered, promptly after discovery of such facts. In the event a new panel assignment is made during the course of the proceedings on a matter, any motion for disqualification or challenge to panel composition shall be brought no later than seven days after the board issues its notice of panel assignment.

(2) Any board member designated to serve on a panel is subject to disqualification for bias, prejudice, interest, or any other cause as provided in RCW 34.05.425. The board member whose disqualification is requested shall promptly determine whether to grant the motion, stating facts and reasons for the determination.

(3) If a party brings a motion challenging the composition of the panel for noncompliance with the requirements of RCW 36.70A.260, the presiding officer shall promptly forward the motion to the ~~((administrative officer))~~ board chair who will prepare a response.

(4) If a motion for disqualification or challenge to composition of the panel is granted, a new panel assignment and/or presiding officer designation will be promptly made. The parties will be informed at the prehearing conference and the resolution of the matter will be included in the prehearing order or other written order of the board issued within twenty days of the filing of the motion.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-590 Briefs. (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief addressing each legal issue it expects the board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order.

(2) Briefs shall be filed according to the requirements and schedule in the prehearing order or any subsequent order amending the briefing schedule.

(3) Clarity and brevity are expected to assist the board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.

(4) A copy of any development regulation provision cited in the brief shall be included as an appendix, unless the provision is quoted verbatim in the brief.

(5) Where there is a map in the record that helps illustrate the material facts, petitioner shall include a copy of that map as an exhibit to the brief.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-600 Hearing—Recording—Recording devices. (1) All hearings shall be ~~((officially))~~ recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment of others shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or common law limits such use.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-630 Official notice—Matters of law. The board or presiding officer ~~((may officially))~~ will take official notice of:

(1) Federal law. The Constitution; congressional acts, resolutions, records, journals, and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders, and notices published in the Federal Register.

(2) Washington state law. The Constitution of the state of Washington; decisions of the state courts; acts, resolutions, records, journals, and committee reports of the legislature; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; all rules, orders, and notices filed with the code reviser; and codes or standards that have been adopted by an agency of this state or by a nationally recognized organization or association.

(3) Laws of other states. The constitutions of other states; decisions of state courts; acts, resolutions, records, journals and committee reports of other state legislatures; decisions of other states administrative agencies; executive orders and proclamations issued by a governor of another state; and

codes or standards that have been adopted by an agency of another state.

(4) Counties and cities. Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington, including adopted plans, adopted regulations, and administrative decisions.

(5) Federally recognized Indian tribes. Constitutions, ordinances, resolutions and motions enacted by federally recognized Indian tribes.

(6) Growth management hearings board. Orders and decisions of the board and the board's rules of practice and procedure.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-720 Dismissal of action. (1) Any action shall be dismissed by the board:

(a) Upon petitioner's withdrawal of the petition for review before entry of a final decision and order; or

(b) Upon stipulation for dismissal by petitioner(s) and respondent(s).

(2) Any action may be dismissed by the board:

(a) Upon motion of the respondent alleging that the petitioner has failed to prosecute the case, failed to comply with these rules, or failed to follow any order of the board; or

(b) Upon the board's own motion for failure by the parties to comply with these rules or any order of the board.

(c) Upon the board's own motion for petitions that are frivolous, not within the jurisdiction of the board, or the petitioner's lack of standing.

NEW SECTION

WAC 242-03-805 Preparation of findings, conclusions and orders. Upon request of the board or presiding officer, findings, conclusions and orders shall be prepared by the parties. The board or presiding officer may adopt, in whole or in part, the parties' findings, conclusions and orders or the board may prepare its own findings, conclusions and orders.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-870 Publication of final decisions and orders. Copies of all final decisions and orders are available from the ~~((office of the growth management hearings board. The growth management hearings board's web site is www.gmhb.wa.gov))~~ environmental and land use hearings office at eluho.wa.gov. The board posts final orders, compliance orders, and other decisions on its website and maintains a digest of its decisions by region.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-900 Determination of noncompliance—Compliance schedule and notice of compliance hearing. (1) In those cases where the board, in a final order, has made a determination of noncompliance pursuant to

RCW 36.70A.300 (3)(b), the board shall remand the matter to the affected state agency, county, or city.

(2) The board's final decision and order shall specify a reasonable time not in excess of one hundred eighty days, or such longer time as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply. In its order the board shall establish a compliance schedule, including a schedule for briefing and hearing, and may require periodic reports on the progress the state agency, county, or city is making toward compliance.

(3) The compliance schedule in the board's order shall set a hearing date for the purpose of determining whether compliance has been achieved and shall constitute notice of the compliance hearing. The compliance hearing shall be given the highest priority of business.

(4) The board may notify the department of a finding of noncompliance. The purpose of the notification is for the department to provide technical assistance to the noncompliant jurisdiction to facilitate speedy resolution of the finding of noncompliance.

AMENDATORY SECTION (Amending WSR 16-02-114, filed 1/6/16, effective 2/6/16)

WAC 242-03-970 Appeals of a board's final decision.

(1) Any party aggrieved by a final decision of the board may appeal the decision to superior court as provided in RCW 34.05.514 and 34.05.542 or 36.01.050 within thirty days of service of the final decision of the board.

(2) The petition for review of a final decision of the board shall be served on the board, however, it is not necessary to name the board as a party.

(3) ~~((In the event that direct appellate review is sought, within thirty days of the filing of a petition for review in the superior court, a party may request a certificate of appealability for direct review by the court of appeals. If the issue on review is the jurisdiction of the board, the board may file an application for direct review.))~~ Application for direct appellate review of a decision of the board is governed by the procedures and criteria of RCW 34.05.518.

WSR 21-17-079

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Nursing Home Administrators)

[Filed August 12, 2021, 4:07 p.m., effective October 10, 2021]

Effective Date of Rule: October 10, 2021.

Purpose: WAC 246-843-130 Continuing education requirements for nursing home administrators. The board of nursing home administrators is adopting an amendment to permanently allow continuing education credit for pandemic related training and experience and, for a limited time, allow nursing home administrators to attest to such trainings acquired under self-study methods if proof of course completion isn't otherwise provided.

This permanent rule will take effect immediately following the expiration of the existing emergency rule filed under WSR 21-13-044.

Citation of Rules Affected by this Order: Amending WAC 246-843-130.

Statutory Authority for Adoption: RCW 18.52.061.

Adopted under notice filed as WSR 21-09-076 on April 20, 2021.

A final cost-benefit analysis is available by contacting Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4723, fax 360-236-2901, TTY 711, email kendra.pitzler@doh.wa.gov.

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

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

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

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

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

Date Adopted: May 27, 2021.

Carl Christensen, Ph.D., RN, Chair
Board of Nursing Home Administrators

AMENDATORY SECTION (Amending WSR 19-19-050, filed 9/13/19, effective 10/14/19)

WAC 246-843-130 Continuing education requirements. (1) A licensed nursing home administrator shall demonstrate completion of thirty-six hours of continuing education every two years and comply with chapter 246-12 WAC, Part 7.

(2) Continuing education approved by the National Continuing Education Review Service (NCERS) is acceptable for continuing education credit.

(3) Continuing education that is not approved by NCERS must meet the following requirements:

(a) The basic methods of continuing education learning are:

- (i) Seminars;
- (ii) Teleconferencing;
- (iii) Webinars; and
- (iv) Self-study programs.

(b) Continuing education courses shall consist of a minimum of one hour of instruction. Hours are based upon clock hours and are calculated in half hour increments. College courses are rated at fifteen hours per each semester unit and ten hours per each quarter credit.

(c) Continuing education must relate to nursing home administration, be designed to promote continued knowledge and skills with nursing home administration standards, and

improve and enhance professional competencies. Continuing education must fit within the following subjects:

- (i) Resident centered care;
- (ii) Human resources;
- (iii) Finance;
- (iv) Environment;
- (v) Leadership and management;
- (vi) Suicide prevention;
- (vii) Cultural competency training;
- (viii) Laws relating to Washington state nursing homes;
- (ix) Pandemic response and compliance measures.

Examples include, but are not limited to, infection control measures, resident engagement, personal protective equipment procurement and training, emergency staffing, writing and updating policies and procedures pertaining to pandemic management, and other pandemic-related training.

(d) The licensee shall retain proof of course completion. To receive full credit, attendees shall attend the full program. The maximum number of hours allowed for continuing education is twelve hours per day.

(e) Until December 31, 2022, licensees due to demonstrate completion of continuing education may accrue up to thirty-six of those hours in pandemic response and compliance measure subjects described in (c)(ix) of this subsection. During this time, if proof of course completion is not provided for pandemic response and compliance measure courses earned under self-study programs as allowed under (a)(iv) of this subsection, the licensee may sign an attestation on a form provided by the department.

(4) Continuing education credit of two hours per month may be granted to a preceptor of an administrator-in-training program.

(5) Continuing education credit of a maximum of two hours per month may be granted for serving as a board member for the board of nursing home administrators.

(6) Within one hundred eighty days after becoming licensed, a nursing home administrator shall attend a board approved course on laws relating to nursing homes in Washington. The board will grant retroactive credit to those licensees who obtain the required training as administrators-in-training under WAC 246-843-090. The state law training course consists of a minimum of a six-hour program, with formal training objectives, that covers the requirements of chapter 18.52 RCW and essential areas of laws that apply to nursing homes regulated by the department of social and health services under chapter 388-97 WAC to include:

- (a) Resident services, medical and social;
- (b) Resident rights, including resident decision making, informed consent, advance directives and notices to residents;
- (c) Enforcement;
- (d) Criminal history inquiries;
- (e) Differences between federal and state law.

WSR 21-17-085
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed August 13, 2021, 8:27 a.m., effective September 13, 2021]

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

Purpose: These amendments update the rules and align them with the Internal Revenue Code.

Citation of Rules Affected by this Order: Amending WAC 182-509-0365, 182-509-0370, and 182-509-0375.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-13-163 on June 23, 2021.

Changes Other than Editing from Proposed to Adopted Version:

Table with 3 columns: Proposed/Adopted, WAC Subsection, Reason. Row 1: Proposed, (2) Subtracting business expenses and income deductions allowed by the Internal Revenue Service that the person would be entitled to if they were filing a federal tax return and: Reason: Added "either" to the end of subsection (2) to more closely tie this lead-in to the subsections that follow.

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

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

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

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

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

Date Adopted: August 13, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-509-0365 MAGI income—Self-employment income. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health ((WAH)) (see WAC 182-509-0300):

(1) Self-employment income is income earned by a person from running a business, performing a service, selling

items that are made, or reselling items with the intent to make a profit, after deducting allowable IRS self-employment expenses. This income can be earned if the person is carrying on a trade or business as a sole proprietor or an independent contractor; a member of a partnership that carries on a trade or business; or otherwise in business for themselves (including a part-time business). Examples of self-employment business structures include, but are not limited to:

(a) Sole proprietorship - An unincorporated business owned by one person.

(b) Partnership - A relationship between two or more people who conduct a trade or business.

(c) Corporation - An entity that conducts business, realizes net income or loss, pays taxes, and distributes profits to shareholders.

(d) S corporation - Similar to a corporation, but this structure passes corporate income, losses, deductions, and credits through to the shareholders for federal tax purposes.

(e) Limited liability company (LLC) - An entity formed by one or more people or entities through a special written agreement that details the organization of the LLC.

(2) Self-employment income is counted as earned income as described in WAC 182-509-0330, except when it is earned by a child or tax dependent and the income is below the filing threshold, as described in WAC 182-509-0360(1).

(3) A person is considered to be self-employed if they earn income without having an employer/employee relationship with the individual who pays the income. ((Factors to consider are)) Self-employed people do not work for a specific employer who pays them a consistent salary or wage. Factors to consider are whether:

(a) The person has primary control or has the right to control what they do and how they do their job;

(b) The business aspects of the person's job are controlled by the person and not the payer (this includes things like how the person is paid, whether expenses are reimbursed, or who provides tools/supplies);

(c) The person has a ((written)) contract stating that ((he or she is)) they are an independent contractor; or

(d) The person reports ((his or her)) their income using one or more IRS schedules or forms that include, but are not limited to:

- (i) Schedule C(());
(ii) Schedule C-EZ(());
(iii) Schedule E;
(iv) Schedule F;
(v) Schedule K-1(());
(vi) Schedule SE;
(vii) Form 940;
(viii) Form 941;
(ix) Form 942;
(x) Form 943;
(xi) Form 1065; or
(xii) Form 1120.

(()) (4) A person is considered to have an employer/employee relationship when:

(a) The individual the person provides services for has primary control of how the work is done; or

(b) The person receives an IRS Form W-2 to report the income that is earned.

~~((4))~~ (5) Self-employment does not have to be a licensed business for a person's business or activity to qualify as self-employment. ~~((Some examples of self-employment are:~~

~~(a) Child care that requires a license under chapter 74.15 RCW;~~

~~(b) Driving a taxi cab;~~

~~(c) Farming/fishing;~~

~~(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;~~

~~(e) Running lodging for roomers or boarders. Roomer income includes money paid to a person for shelter costs by someone not included in the person's household who resides in the same home when:~~

~~(i) The person owns or is buying his or her residence; or~~

~~(ii) The person rents all or a part of the residence and the total rent charged to all others in the home is more than the total rent obligation of the person.~~

~~(f) Running an adult family home;~~

~~(g) Providing services such as a massage therapist or a professional escort;~~

~~(h) Retainer fees to reserve a bed for a foster child;~~

~~(i) Selling home-made items or items that are supplied to the individual;~~

~~(j) Selling or donating biological products such as providing blood or reproductive material for profit;~~

~~(k) Working as an independent contractor; and~~

~~(l) Running a business or trade either as a sole proprietorship or in a partnership.~~

~~(5))~~ (6) A person must keep records of ~~((his or her))~~ their self-employment income and deductions and provide this information to the agency upon request.

~~((6) The agency does not count receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources as self-employment income (such as fishing, shell fishing, or selling timber from protected tribal land). This is considered conversion of a resource. See WAC 182-509-0340.~~

~~(7) A person who is an employee of a company or other individual who does the activities listed in subsection (4) of this section as a part of his or her job duties is not considered to be self-employed.~~

~~(8) Self-employment income is counted as earned income as described in WAC 182-509-0330.)~~

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-509-0370 MAGI income—How self-employment income is counted. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health ~~((WAH))~~ (see ~~WAC 182-509-0300~~);

(1) If the person has worked long enough at the business to file a federal tax return for the previous year and it represents his or her current income, the agency determines self-employment income by using the income and deductions claimed on the previous year's tax return.

(2) If the person has not worked long enough at the business to file a federal tax return in the previous year, the

agency permits a determination of monthly self-employment income by:

(a) Adding together gross self-employment income and any profit made from selling business property or equipment over the period of time the business has been in operation within the last year;

(b) Subtracting business expenses and income deduction expenses allowed by the Internal Revenue Service that the person would be entitled to if they were filing a full year return; and

(c) Averaging the income to come up with a monthly amount based on the period of time the business has been in operation within the last year.

~~(3) If the person's current income does not represent his or her projected income as evidenced by clear indications of future changes in income, the agency permits the person to estimate a monthly amount by averaging income), the medicaid agency counts self-employment income by:~~

(1) Adding together gross self-employment income and any profit made from selling business property or equipment over a period of time; and

(2) Subtracting business expenses and income deductions allowed by the Internal Revenue Service that the person would be entitled to if they were filing a federal tax return and either:

(a) Averaging the income to come up with a monthly amount based on the period of time the business has been in operation within the last year; or

(b) Averaging the income over a representative period of time if the current income does not represent the person's projected income as shown by clear indications of future changes in income; or

(c) By averaging the self-employed income and deductions claimed on the previous year's tax return over a representative period of time.

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

WAC 182-509-0375 MAGI income—Lump sums. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health ~~((WAH))~~ (see WAC 182-509-0300):

(1) A lump sum payment is money that a person receives but does not expect to receive on a continuing basis, such as an insurance settlement.

~~(2) ((Any portion of a lump sum payment that is awarded for wrongful death, personal injury, damage, or loss of property is excluded from income.~~

~~(3) Any remaining portion of))~~ A lump sum payment is only counted as income if it is received in the month of application, ~~((unless it))~~ and it otherwise qualifies as ~~((non-counted))~~ countable income under another rule ~~((, and with the exception of subsections (4) and (5) of this section.~~

~~(4) Receipt of a lump sum by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt resource in the month of receipt and is not budgeted as income.~~

~~(5) Federal, state and local tax refunds (including any interest and penalties) and earned income tax lump sums are not counted as income).~~

WSR 21-17-088
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 13, 2021, 9:06 a.m., effective September 13, 2021]

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

Purpose: The purpose of this rule making order is to (1) establish a definition of absence concerning synchronous and asynchronous instruction, (2) establish excused absences that pertain only during times of emergency school facility closures where districts are required to provide synchronous and asynchronous instruction, and (3) establish the minimum criteria of a district's multi-tiered system of support for attendance.

Citation of Rules Affected by this Order: New WAC 392-401-011, 392-401-012, 392-401-016, 392-401-018, 392-401-038, 392-401-040 and 392-401-045; and amending WAC 392-401-005, 392-401-010, 392-401-015, and 392-401-020.

Statutory Authority for Adoption: RCW 28A.300.046; and ESHB 1113 (2021), section 3.

Adopted under notice filed as WSR 21-13-127 on June 22, 2021.

Changes Other than Editing from Proposed to Adopted Version: WAC 392-401-005 Purpose, section edited to provide more clarity and use plain speak; WAC 392-401-018 Daily attendance taking, section edited to clarify intent is [in] this section applies specifically to synchronous and asynchronous instruction; WAC 392-401-045 Multitiered system of support for attendance, subsection (1) edited to specify these are minimum requirements only; WAC 392-401-045 (2)(d) (ii) edited to state that the assigned person to conduct outreach can be a district or school designee, and the outreach can happen in coordination with community partners or other programs; WAC 392-401-045 [(2)](iv) edited to remove reference to juvenile court and department of children, youth, and families; WAC 392-401-045 [(2)](v) edited to remove reference to filing a truancy petition and add the early intervention requirements from the law, namely parent communication, truancy screener and best practice interventions.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 7, Amended 4, Repealed 0.

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

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

Date Adopted: August 10, 2021.

Chris P. S. Reykdahl
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-005 Purpose. The purpose of this chapter is to ~~((provide a definition of))~~:

(1) Define student absence ~~((~~to~~))~~ for school districts ~~((that))~~ in order to support ~~((s))~~ accurate and consistent attendance data collection across the state; and

(2) Establish the minimum criteria of a multitiered system of support for attendance that each school district must implement in order to address barriers to student attendance, provide timely interventions and best practices to reduce chronic absenteeism and truancy as required under chapter 28A.225 RCW.

Attendance data is timely, actionable, and measures when a student has accessed instruction. Attendance data highlights the inequities in our systems and signals areas for system and school improvement. Attendance data also signals to adults when students might need additional support.

~~((This effort will))~~ These rules support the state and school districts to address the challenge of chronic absenteeism, ~~((in an effort to))~~ improve learning outcomes and success in school for all students and ~~((to))~~ support the whole child.

AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-010 Authority. The authority for this chapter is RCW 28A.300.046, which requires the superintendent of public instruction to adopt rules establishing a standard definition of student absence from school. Additional authority for this chapter is in chapter 28A.225 RCW, which requires the superintendent of public instruction to adopt rules pertaining to required actions on the part of school districts to address barriers to student attendance and truancy.

NEW SECTION

WAC 392-401-011 Scope and application. (1) This chapter applies to common school districts, charter public schools, and state-tribal education compact schools.

(2) This chapter does not apply to students enrolled in an alternative learning experience and claimed for state funding pursuant to WAC 392-121-182.

NEW SECTION

WAC 392-401-012 General definitions. (1) "Asynchronous instruction" means instruction prepared by a certif-

icated teacher that occurs away from the physical school setting without two-way interactive communication.

(2) "In-person instruction" is when instructional activity is planned and delivered under the supervision of school district staff and on school grounds.

(3) "Parent" has the same meaning as in WAC 392-172A-01125.

(4) "Synchronous online instruction" means scheduled real-time instruction between the student and a certified teacher or a district staff supervised by a certified teacher that provides opportunities for live two-way interactive communication online.

AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-015 Definition of ~~((absent or))~~ absence from in-person instruction. ~~((+))~~ A student is absent from in-person instruction when ~~((they are))~~ the student is:

~~((a))~~ (1) Not physically present on school grounds; and
~~((b))~~ (2) Not participating in the following activities at an approved location:

~~((i))~~ (a) Instruction; or
~~((ii))~~ (b) Any instruction-related activity; or
~~((iii))~~ (c) Any other district or school approved activity that is regulated by an instructional/academic accountability system, such as participation in district-sponsored sports.

~~((2))~~ Students shall not be absent if:
~~((a))~~ They have been suspended, expelled, or emergency expelled pursuant to chapter 392-400 WAC;
~~((b))~~ Are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and
~~((c))~~ The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.

~~((3))~~ A full day absence is when a student is absent for fifty percent or more of their scheduled day.

~~((4))~~ A school or district shall not convert or combine tardies into absences that contribute to a truancy petition.)

NEW SECTION

WAC 392-401-016 Definition of absence from synchronous and asynchronous instruction. (1) A student is absent from synchronous online instruction when the student does not log in to the synchronous meeting/class.

(2) A student is absent from asynchronous instruction when there is no evidence that the student accessed the planned asynchronous activity.

(3) Evidence of student participation in asynchronous activities must occur daily, within a twenty-four-hour time frame of when the participation is planned or expected.

NEW SECTION

WAC 392-401-018 Daily attendance taking. School districts must take daily attendance for all enrolled students whether the instructional modality is in-person, synchronous or asynchronous.

When instruction is synchronous online or asynchronous, secondary schools must take attendance daily in each

course with planned instruction and elementary schools must take attendance at least twice a day.

AMENDATORY SECTION (Amending WSR 18-11-011, filed 5/3/18, effective 8/1/18)

WAC 392-401-020 Excused absences. (1) Absences due to the following reasons must be excused:

~~((1))~~ (a) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental, optometry, pregnancy, and in-patient or out-patient treatment for chemical dependency or mental health) for the student or person for whom the student is legally responsible;

~~((2))~~ (b) Family emergency including, but not limited to, a death or illness in the family;

~~((3))~~ (c) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;

~~((4))~~ (d) Court, judicial proceeding, court-ordered activity, or jury service;

~~((5))~~ (e) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;

~~((6))~~ (f) State-recognized search and rescue activities consistent with RCW 28A.225.055;

~~((7))~~ (g) Absence directly related to the student's homeless or foster care/dependency status;

~~((8))~~ (h) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;

~~((9))~~ (i) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC if the student is not receiving educational services and is not enrolled in qualifying "course of study" activities as defined in WAC 392-121-107;

~~((10))~~ (j) Absences due to student safety concerns, including absences related to threats, assaults, or bullying;

~~((11))~~ (k) Absences due to a student's migrant status;

~~((and~~
~~((12))~~ (l) Absences due to an approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent, guardian, or emancipated youth; and

~~((m))~~ Absences due to the student's lack of necessary instructional tools, including internet access or connectivity.

(2) In the event of emergency school facility closure due to COVID-19, other communicable disease outbreak, natural disaster, or other event when districts are required to provide synchronous and asynchronous instruction, absences due to the following reasons must be excused:

(a) Absences related to the student's illness, health condition, or medical appointments due to COVID-19 or other communicable disease;

(b) Absences related to caring for a family member who has an illness, health condition, or medical appointment due to COVID-19, other communicable disease, or other emergency health condition related to school facility closures;

(c) Absences related to the student's family obligations during regularly scheduled school hours that are temporarily necessary because of school facility closures, until other arrangements can be made; and

(d) Absences due to the student's parent's work schedule or other obligations during regularly scheduled school hours, until other arrangements can be made.

(3) Districts may define additional categories or criteria for excused absences. A school principal or designee has the authority to determine if an absence meets the ~~((above))~~ criteria in subsections (1) and (2) of this section and school district policy for an excused absence. ~~((Districts may define additional categories or criteria for excused absences.))~~

NEW SECTION

WAC 392-401-038 Data reporting. School districts must report student absences to the office of superintendent of public instruction through the comprehensive education data and research system (CEDARS) as provided in the CEDARS data manual.

NEW SECTION

WAC 392-401-040 Student absences—General requirements. (1) Students shall not be considered absent if:

- (a) The student has been suspended, expelled, or emergency expelled pursuant to chapter 392-400 WAC;
 - (b) Are receiving educational services as required by RCW 28A.600.015 and chapter 392-400 WAC; and
 - (c) The student is enrolled in qualifying "course of study" activities as defined in WAC 392-121-107.
- (2) A school or district shall not convert or combine tardies into absences that contribute to a truancy petition.

NEW SECTION

WAC 392-401-045 Multitiered system of support for attendance. (1) School districts must implement these minimum requirements of a multitiered system of support for attendance to address barriers to student attendance, provide timely interventions and best practices to reduce chronic absenteeism and truancy.

(2) Multitiered systems of support under this section must include:

- (a) Monitoring daily attendance data for all students who are absent, whether the absence is excused or unexcused;
- (b) A process to contact families and verify current contact information for each enrolled student that includes multiple attempts and modalities in the parent's home language;
- (c) Differentiated supports that address the barriers to attendance and participation that includes universal supports for all students and tiered interventions for students at-risk of and experiencing chronic absence, including school and district attendance or engagement teams, connecting to community resources, and community engagement boards; and
- (d) A process for outreach and reengagement for students who have been withdrawn due to nonattendance and there is no evidence that the student is enrolled elsewhere. This outreach and reengagement process must include:
 - (i) A school and/or district point person/people to maintain the list, keep it updated, and coordinate the outreach;
 - (ii) School or district staff assigned to conduct the outreach and attempts at reengagement in coordination with community partners or other programs;

- (iii) Multiple methods of communication and outreach in a language or mode of communication that the parent understands including phone calls, texts, letters, and home visits;
- (iv) Referral to community-based organizations;
- (v) Documentation of the attempts to reach student and family; and
- (vi) Follow the required steps to address unexcused absences in chapter 28A.225 RCW, including early communication to parents, holding parent conferences and administering a truancy screener to understand the underlying reasons for the absences, and providing evidence-based or best practice interventions, even if the student has been withdrawn due to nonattendance.

WSR 21-17-089

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed August 13, 2021, 9:45 a.m., effective September 13, 2021]

Effective Date of Rule: Thirty-one days after filing.
 Purpose: The agency is implementing rules to establish a revolving fund for operators of group homes supporting individuals recovering from substance use disorder.
 Citation of Rules Affected by this Order: New WAC 182-135-0100 and 182-135-0200.
 Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 41.05.762.
 Other Authority: 42 U.S.C. § 300x-25(a).
 Adopted under notice filed as WSR 21-13-143 on June 22, 2021.
 Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
WAC 182-135-0200		
Proposed	(8) Assessment of penalties. The authority may assess a penalty for each failure to pay the monthly installment described in subsection (7) of this section by the date specified in the loan agreement between the authority and the recovery residence operator involved in the agreement.	The agency added the word "reasonable" to this subsection to clarify that any penalties assessed for failure to make a monthly payment would be reasonable.
Adopted	(8) Assessment of penalties. The authority may assess a reasonable penalty for each failure to pay the monthly installment described in subsection (7) of this section by the date specified in the loan agreement between the authority and the recovery residence operator involved in the agreement.	

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 13, 2021.

Wendy Barcus
Rules Coordinator

Chapter 182-135 WAC

RECOVERY RESIDENCE REVOLVING LOAN

NEW SECTION

WAC 182-135-0100 General. The health care authority operates programs to support people who are in recovery from substance use disorder as described in RCW 41.05.760.

NEW SECTION

WAC 182-135-0200 Operating fund. (1) **Purpose.** The health care authority has established the recovery residence operating revolving loan to maintain an ongoing revolving fund, as authorized by 42 U.S.C. Sec. 300x-25(a) and as described in RCW 41.05.762.

(2) **Fund.** The fund identified in subsection (1) of this section lends money to pay for the operating start-up costs associated with recovery residence programs. These costs include, but are not limited to:

- (a) One-time rent or mortgage payments;
- (b) Utility security deposits;
- (c) Salaries for on-site staff;
- (d) Minimal maintenance costs; and
- (e) Furnishings purchased for recovery residences.

(3) **Maximum loan amount.** A loan from the fund is for an amount of up to four thousand dollars.

(4) **Eligible recipients.** To be an eligible recovery residence recipient, an entity must:

- (a) Be on the recovery residence registry published on the authority's website or be actively seeking certification and registration under RCW 41.05.760;
- (b) Be a Washington state nonprofit organization;
- (c) Operate a recovery residence for a group of at least six people;
- (d) Prohibit the use of alcohol, marijuana, or any illegal drug in the residence;
- (e) Have a policy in place to address any use of alcohol, marijuana, or an illegal drug by residents; and
- (f) Allow the use of any prescribed medication for physical health, mental health, and substance use disorders.

(5) **Requirements for residents.** Residents must:

(a) Pay for the cost of recovery residence housing, including any rent or fees; and

(b) Through a majority vote, establish policies governing residence in the housing, including how residence applications are approved.

(6) **Application requirement.** To be an applicant, an entity that meets the requirements of subsection (4) of this section must apply for a recovery residence operating loan using the application process described on the authority's website.

(7) **Loan repayments.**

(a) Each recovery residence loan made under this section must be repaid by the residents of the recovery residence that received the funds. The loan must be paid in full within two years from the date the loan was made.

(b) Residents must repay the loan through monthly installments set by the authority.

(8) **Assessment of penalties.** The authority may assess a reasonable penalty for each failure to pay the monthly installment described in subsection (7) of this section by the date specified in the loan agreement between the authority and the recovery residence operator involved in the agreement.

(9) **Appeals.**

(a) An applicant or recipient may appeal an adverse decision notice and request an administrative hearing under chapter 182-526 WAC by following the instructions included in the notice.

(i) An applicant may appeal a denial of a loan request as described in (a) of this subsection.

(ii) A recipient may appeal the following actions including, but not limited to:

- (A) Late payment fees;
- (B) Default due to nonpayment; or
- (C) Default due to losing Washington alliance for quality recovery residences accreditation.

(b) An applicant or recipient of this program has ninety days from the receipt of the adverse decision to appeal and must follow the process contained in the notice.

WSR 21-17-092

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 13, 2021, 11:36 a.m., effective September 13, 2021]

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

Purpose: The department is amending WAC 388-436-0055 What is the disaster cash assistance program (DCAP)?, to update and clarify disaster cash assistance program and related consolidated emergency assistance program rules and to comply with SHB 1151 (chapter 9, Laws of 2021).

Citation of Rules Affected by this Order: Amending WAC 388-436-0055.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055.

Adopted under notice filed as WSR 21-12-087 on June 1, 2021.

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

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

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

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

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

Date Adopted: August 13, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-18-008, filed 8/22/08, effective 9/22/08)

WAC 388-436-0055 What is the disaster cash assistance program (DCAP)? Disaster cash assistance program (DCAP) is paid through the consolidated emergency assistance program (CEAP) and is designed to provide cash assistance to individuals and families who face an emergency and do not have the money to meet their basic needs.

(1) DCAP is available if you meet all of the following:

(a) You suffered losses (~~and~~);

~~(b) You live in an area that has been declared a disaster (for individuals by) or where the Governor(-) has declared a state of emergency;~~

~~((b) You are not able to live in your home or you cannot return to your home because of the disaster;~~

~~(c) Your home in the disaster area is your primary residence (not a vacation home) and you were living there at the time of the disaster;~~

~~(d)) (c) You are a resident of Washington state as defined in WAC 388-468-0005;~~

~~((e)) (d) Your net income is under the limits in WAC 388-436-0050(1); and~~

~~((f)) (e) You or your family ((s)) are not eligible for any other program that could meet your need as stated in WAC 388-436-0030.~~

~~((2)) (2) In the event of a declared disaster, you must also meet the following:~~

~~(a) You are not able to live in your home or you cannot return to your home because of the disaster; and~~

~~(b) Your home in the disaster area is your primary residence (not a vacation home) and you were living there at the time of the declared disaster.~~

(3) Applicants must demonstrate a financial need for emergency funds for one or more of the following basic requirements:

(a) Food;

(b) Shelter;

(c) Clothing;

(d) Minor medical care;

(e) Utilities;

(f) Household maintenance supplies; or

(g) Necessary clothing or transportation costs to accept or retain a job or

(h) Transportation for a minor, not in foster care, to a home where care will be provided by family members or approved caretakers.

~~((3)) (4) DCAP benefits are only available to households when the Governor issues an order under RCW 74.04.-660(6) extending CEAP benefits to households without children.~~

(5) Payments under this program are limited to not more than thirty consecutive days within a period of twelve consecutive months, except when this limitation under RCW 74.04.660(1) is waived by proclamation of the Governor. The Governor's proclamation will determine the frequency if the thirty day limitation is waived.

(6) The department may discontinue program benefits issuances when the state of emergency or disaster declaration ends or when the Governor's Order under RCW 74.04.660(6) or the authority thereunder expires or is terminated.

(7) The department may discontinue the program benefits issuances when the funds appropriated for DCAP are exhausted.

WSR 21-17-093

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 13, 2021, 1:46 p.m., effective September 13, 2021]

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

Purpose: The department is amending WAC 388-482-0005 How does being a student of higher education affect my eligibility for Washington basic food program?, to align rule language with federal regulations related to student eligibility for the Supplemental Nutrition Assistance Program (SNAP) and implement changes to student eligibility for basic food as provided in the Consolidated Appropriation Act, 2021 (H.R. 133, Section 702) due to the coronavirus (COVID-19) pandemic.

Citation of Rules Affected by this Order: Amending WAC 388-482-0005.

Statutory Authority for Adoption: RCW 43.20A.760, 74.04.500, 74.04.510, and 74.08A.120.

Other Authority: 7 C.F.R. 273.5 and H.R. 133.

Adopted under notice filed as WSR 21-11-046 on May 13, 2021.

Changes Other than Editing from Proposed to Adopted Version: The original proposed rule was filed as WSR 20-23-050 on November 11, 2020. A supplemental proposed rule was filed (as adopted above) and amended WAC 388-482-0005 to expand SNAP eligibility for higher education students due to the indefinite conditions of the coronavirus (COVID-19) pandemic as provided under Section 702 of the

Consolidated Appropriation Act, 2021 (H.R. 133), signed into law on December 27, 2020.

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

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

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

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

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

Date Adopted: August 13, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-05-047, filed 2/13/20, effective 3/15/20)

WAC 388-482-0005 How does being a student of higher education affect my eligibility for the Washington basic food program? (1) ~~((For basic food, we consider you a student of higher education))~~ If you are enrolled at least half-time in an institution of higher education, you are ineligible for basic food unless you qualify for an exemption in subsection (4) of this section.

(2) You are considered a student of higher education for basic food purposes if you are:

(a) ~~((Age eighteen through forty-nine;~~
(b) ~~Physically and mentally able to work (we determine if you are unable to work);~~

~~((e))~~ Enrolled in an institution of higher education at least half-time as defined by the institution; and

~~((d))~~ (b) Enrolled in coursework considered to be higher education.

~~((2))~~ (3) An institution of higher education is:

(a) Any educational institution that requires a high school diploma or high school equivalency certificate;

(b) A business, trade, or vocational school that requires a high school diploma or high school equivalency; or

(c) A two-year or four-year college or university that offers a degree but does not require a high school diploma or high school equivalency.

~~((3))~~ (4) If you are a student of higher education, you must also meet at least one of the following ~~((conditions))~~ exemptions to be eligible for basic food:

(a) You are age seventeen or younger;

(b) You are age fifty or older;

(c) You are physically or mentally unable to work (we determine if you are unable to work);

(d) You have paid employment and work an average of at least twenty hours per week each month;

~~((b))~~ (e) You are self-employed, work, and earn at least the amount you would earn working an average of twenty hours per week at the federal minimum wage each month; or
~~((e))~~ (f) You were participating in a state or federal work study program during the regular school year.

(i) To qualify under this ~~((condition))~~ exemption, you must:

(A) Have approval for work study at the time of application for basic food;

(B) Have work study that is approved for the school term; and

(C) Anticipate actually working during that time.

(ii) The work study exemption begins:

(A) The month in which the school term starts; or

(B) The month work study is approved, whichever is later.

(iii) Once begun, the work study exemption shall continue until:

(A) The end of the month in which the school term ends;

or

(B) We find out you refused a work study assignment.

(g) Starting January 16, 2021, you are determined eligible to participate in state or federal work study by your institution of higher education during the regular school year. Requirements under subsections (4)(f)(i)-(iii) of this section are suspended until the COVID-19 federal public health emergency ends as described under subsection (5) of this section.

~~((d))~~ (h) You are responsible for more than half the care of a dependent person in your assistance unit (AU) who is age five or younger;

~~((e))~~ (i) You are responsible for more than half the care of a dependent person in your AU who is between age six and eleven, if we have determined that there is not adequate child care available during the school year to allow you to:

(i) Attend class and satisfy the twenty-hour work requirement; or

(ii) Take part in a work study program.

~~((f))~~ (j) You are a single parent responsible for the care of your natural, step, or adopted child who is eleven or younger;

~~((g))~~ (k) You are an adult who has the parental responsibility of a child who is age eleven or younger if none of the following people live in the home:

(i) The child's parents; or

(ii) Your spouse.

~~((h))~~ (l) You participate in the WorkFirst program under WAC 388-310-0200;

~~((i))~~ (m) You receive TANF or SFA benefits;

~~((j))~~ (n) You attend an institution of higher education through:

(i) The Workforce Investment Act (WIA);

(ii) The basic food employment and training program under chapter 388-444 WAC;

(iii) An approved state or local employment and training program; or

(iv) Section 236 of the Trade Act of 1974.

(o) Starting January 16, 2021, you have an expected family contribution (EFC) of zero dollars in the current academic

year as determined by part F of Title IV of the Higher Education Act of 1965.

~~((4))~~ (5) The conditions in subsection (4)(g) and (o) of this section will continue as follows:

(a) For initial applications, until thirty days after the COVID-19 federal public health emergency ends.

(b) For recertifications, no earlier than your first recertification thirty days after COVID-19 federal public health emergency ends.

(6) If you are a student of higher education, your status as a student:

(a) Begins the first day of the school term; and

(b) Continues through vacations. This includes the summer break if you plan to return to school for the next term.

~~((5))~~ (7) We do not consider you a student of higher education if you:

(a) Graduate;

(b) Are suspended or expelled;

(c) Drop out; or

(d) Do not intend to register for the next normal school term other than summer school.

WSR 21-17-140

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 18, 2021, 10:44 a.m., effective September 18, 2021]

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

Purpose: The adopted rules are the second of three phases of rules to implement portions of the long-term services and supports trust program in Title 50B RCW under the employment security department's authority. The rules address definitions, assessing and collecting premiums, self-employed elective coverage, collective bargaining agreements, and appeals.

Citation of Rules Affected by this Order: New WAC 192-900-005 Aggrieved party, 192-900-010 Calendar quarter, 192-900-015 Employer, 192-900-020 Employer agent, 192-900-025 Interested parties, 192-900-030 Self-employed, 192-900-035 Terms meaning deliver, 192-910-005 Employer reporting requirements, 192-910-010 When are employer premium payments due?, 192-910-015 What are the employer's responsibilities for premium deductions?, 192-910-020 How are payments applied to long-term services and supports premiums?, 192-915-005 Election of coverage for self-employed persons, 192-915-010 What are reportable wages for self-employed persons electing coverage?, 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage?, 192-920-005 Parties to collective bargaining agreements, 192-925-005 Adoption of model rules, 192-925-010 Who can appeal or submit a petition for review?, and 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply.

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.080, 50B.04.090, 50B.04.120.

Adopted under notice filed as WSR 21-12-104 on June 2, 2021.

A final cost-benefit analysis is available by contacting April Amundson, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-485-2816, Washington relay 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/rulemaking/ltss>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 18, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 18, Amended 0, Repealed 0.

Date Adopted: August 17, 2021.

April Amundson
Policy and Rules Manager
Leave and Care Division

Chapter 192-900 WAC

DEFINITIONS

NEW SECTION

WAC 192-900-005 Aggrieved party. An "aggrieved party" is any interested party who receives an adverse decision from:

- (1) The department for which the department has provided notice of appeal rights;
- (2) The office of administrative hearings; or
- (3) The commissioner's review office.

NEW SECTION

WAC 192-900-010 Calendar quarter. "Calendar quarter" has the meaning provided in WAC 192-500-020.

NEW SECTION

WAC 192-900-015 Employer. (1) An "employer" is:

(a) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this chapter;

(b) The state, state institutions, and state agencies;

(c) Any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision; and

- (d) A franchisee.
- (2) "Employer" does not include the United States of America.
- (3) The term employer is used for both employer and employer agent.
- (4) This section does not apply to:
 - (a) Any self-employed person or federally recognized tribe that has not elected coverage under Title 50B RCW; or
 - (b) Any person performing casual labor as defined in RCW 50A.05.010.

NEW SECTION

WAC 192-900-020 Employer agent. "Employer agent" has the meaning provided in WAC 192-500-015.

NEW SECTION

WAC 192-900-025 Interested parties. (1) In all determinations, cases, and appeals adjudicated by the employment security department under Title 50B RCW, the department is an "interested party."

(2) Other interested parties in determinations, cases, and appeals include:

- (a) The employee or former employee; and
- (b) An employer or former employer of that employee that is required to provide information to the department related to the determination or appeal in question.

(3) The department may designate an employee or employer as an interested party in other determinations made by the department.

NEW SECTION

WAC 192-900-030 Self-employed. A "self-employed" person has the meaning provided in WAC 192-500-170.

NEW SECTION

WAC 192-900-035 Terms meaning deliver. (1) Unless otherwise specified, the terms "mail," "provide," "file," "submit," and "send" are interchangeable and mean to properly transmit, deliver, or distribute:

- (a) By email or other electronic services; or
- (b) In another format approved by the department.

(2) This section does not apply to appeals filed under Title 50B RCW.

Chapter 192-910 WAC**ASSESSING AND COLLECTING PREMIUMS**NEW SECTION

WAC 192-910-005 Employer reporting requirements. Per RCW 50B.04.080, premium assessment, collection, and reporting procedures under Title 50B RCW must align with the procedures under Title 50A RCW to the extent feasible. The following reporting requirements under the paid family and medical leave program apply to the long-term services and supports trust program:

(1) WAC 192-510-025 What wages are reportable to the department for premium assessment purposes?

(2) WAC 192-540-030 What are employers required to report to the department?

(3) WAC 192-540-040 How should employers report hours for each calendar quarter?

(4) WAC 192-540-050 When are employers required to submit quarterly reports to the department?

NEW SECTION

WAC 192-910-010 When are employer premium payments due? (1) Premiums must be paid quarterly. Each payment must include the premiums owed on all wages subject to premiums during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which premiums are being paid.

(2) Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the premium payment must be postmarked by the next business day.

(3) Premium payments are due within ten calendar days when a business is dissolved or the account is closed by the department.

NEW SECTION

WAC 192-910-015 What are the employer's responsibilities for premium deductions? (1) Employers must deduct premiums for each pay period in which the employee receives wages.

(2) When an employer is found by the department to be noncompliant with collecting premiums from an employee, the employer must file an amended report and pay the past due premiums.

(3) Subsection (1) of this section does not apply if:

(a) An employer was unable to deduct the premium for a pay period due to a lack of sufficient employee wages for that pay period; or

(b) The employee has an approved exemption under RCW 50B.04.085 and has provided the required proof of the exemption to the employer.

NEW SECTION

WAC 192-910-020 How are payments applied to long-term services and supports premiums? (1) A payment received with a premium assessment will be applied to the quarter for which the premium assessment applies. A payment exceeding the premiums due for that quarter will be applied to any other debt as provided in subsection (4) of this section.

(2) If no debt exists, premium overpayments of less than fifty dollars will be credited to future payments due.

(3) If no debt exists, premium overpayments of fifty dollars or more may be refunded to the employer at the employer's request. Otherwise, such overpayments will be credited to future payments due.

(4) Payments received will be applied in the following order of priority:

- (a) Current quarter balance;
- (b) Any previous quarter premium balance due starting with the oldest quarter;
- (c) Then beginning with the oldest quarter in which a balance is owed.

Chapter 192-915 WAC

SELF-EMPLOYED PERSONS

NEW SECTION

WAC 192-915-005 Election of coverage for self-employed persons. (1) Self-employed persons as defined in RCW 50B.04.090 may elect coverage under Title 50B RCW.

(2) Coverage may only be elected beginning January 1, 2022, and before January 1, 2025, or within three years of becoming self-employed for the first time.

(3) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(4) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(5) A self-employed person who elects coverage must continue to pay premiums until such time that the individual retires from the workforce or is no longer self-employed.

(6) The self-employed person must file a notice with the department if the individual retires from the workforce or is no longer self-employed.

NEW SECTION

WAC 192-915-010 What are reportable wages for self-employed persons electing coverage? Each quarter, self-employed individuals who elected coverage under Title 50B RCW will report wages as described in WAC 192-510-031.

NEW SECTION

WAC 192-915-015 How will the department determine the wages earned and hours worked for self-employed persons electing coverage? The department will determine the wages earned and hours worked for self-employed individuals as described in WAC 192-510-030.

Chapter 192-920 WAC

COLLECTIVE BARGAINING AGREEMENTS

NEW SECTION

WAC 192-920-005 Parties to collective bargaining agreements. (1) Parties to a collective bargaining agreement in existence on October 19, 2017, are not required to be subject to the rights and responsibilities under Title 50B RCW and related rules unless and until the existing agreement is reopened or renegotiated by the parties or expires.

(2) Employers must inform the department immediately upon the reopening, renegotiation, or expiration of a collective bargaining agreement that was in effect prior to October 19, 2017.

(3) Employees not covered by a collective bargaining agreement are subject to the rights and responsibilities of Title 50B RCW and related rules. Employers are also subject to the rights and responsibilities of Title 50B RCW and related rules for employees not covered by a collective bargaining agreement, regardless of whether the employer is party to a collective bargaining agreement covering other employees.

(4) Employers party to multiple collective bargaining agreements among different bargaining units are subject to the rights and responsibilities of Title 50B RCW and related rules as they pertain to the bargaining units whose collective bargaining agreement is reopened or renegotiated by the parties or expires, on or after October 19, 2017.

(5) Parties to a collective bargaining agreement in existence on October 19, 2017, that has not been reopened or renegotiated by the parties or expired may elect to be subject to all applicable rights and responsibilities under Title 50B RCW and related rules prior to the expiration, reopening, or renegotiation of the agreement. Parties seeking to do so must submit to the department a memorandum of understanding, letter of agreement, or a similar document signed by all parties.

Chapter 192-925 WAC

APPEALS AND PROCEDURE

NEW SECTION

WAC 192-925-005 Adoption of model rules. The model rules of procedure contained in chapter 10-08 WAC, are, to the extent they are not inconsistent with the rules contained in this chapter, adopted as the rules of procedure for Title 50B RCW. The rules contained in this will, to the extent of any conflict with the model rules of procedure, be deemed to supersede the conflicting provisions of the model rules of procedure.

NEW SECTION

WAC 192-925-010 Who can appeal or submit a petition for review? (1) An aggrieved party as defined in WAC 192-900-005 may file an appeal to the department by using the department's online services, or in another format approved by the department.

(2) Any aggrieved party who receives a decision from the office of administrative hearings, other than an order approving a withdrawal of appeal, a consent order, or an interim order, may file a written petition for review, including filing by using the department's online services, or in another format approved by the department.

NEW SECTION

WAC 192-925-015 Sections of general procedural rules for appeal under chapter 192-800 WAC apply. Per RCW 50B.04.120, appeal procedures under Title 50B RCW must align with the appeal procedures under Title 50A RCW. The following general procedural rules for appeal under the

paid family and medical leave program apply to the long-term services and supports trust program:

- (1) WAC 192-800-040 What are the timeliness requirements for submitting an appeal or a petition for review?
- (2) WAC 192-800-045 Can an appeal be withdrawn?
- (3) WAC 192-800-050 What happens after an appeal is submitted?
- (4) WAC 192-800-055 Who will be notified if an appeal is filed and what will it include?
- (5) WAC 192-800-060 What happens if an appeal or a petition has been filed and one of the parties has a change of contact information?
- (6) WAC 192-800-065 How does the time computation work for perfecting an appeal or petition for review?
- (7) WAC 192-800-070 Who can give testimony and examine witnesses during an appeal hearing?
- (8) WAC 192-800-075 Who can request a postponement of a hearing?
- (9) WAC 192-800-080 Will depositions and written discovery be permitted?
- (10) WAC 192-800-085 When will administrative law judges hear consolidated cases?
- (11) WAC 192-800-090 What is included in decisions issued by the office of administrative hearings?
- (12) WAC 192-800-095 Can a decision of the commissioner incorporate a decision under review?
- (13) WAC 192-800-100 What is the process for filing petition for review and any reply to the petition for review?
- (14) WAC 192-800-105 When and how can an administrative law judge dispose of an appeal?
- (15) WAC 192-800-110 What options are available for an aggrieved party who received an order of default?
- (16) WAC 192-800-115 What is the process for filing a petition for reconsideration to the commissioner's review office?
- (17) WAC 192-800-120 When would the commissioner not issue declaratory orders?
- (18) WAC 192-800-125 When is a petition for review considered delivered to the department?