

**WSR 21-22-003**

**NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF HEALTH**

(Orthotics and Prosthetics Advisory Committee)

[Filed October 20, 2021, 3:07 p.m.]

In accordance with the Open Public Meeting[s] Act (chapter 42.30 RCW) and the Administrative Procedure Act (chapter 34.05 RCW), the following is the schedule of regular meetings for the department of health (DOH), orthotics and prosthetics advisory committee for the year 2022. The orthotics and prosthetics advisory committee meetings are open to the public and access for persons with disabilities may be arranged with advance notice; please contact the staff person below for more information.

Agendas for the meetings listed below are made available in advance via listserv and DOH website (see below). Every attempt is made to ensure that the agenda is up-to-date. However, the orthotics and prosthetics advisory committee reserve the right to change or amend agendas at the meeting.

Date	Time	Location
April 29, 2022	9:00 a.m.	<b>Webinar only</b>
October 14, 2022	9:00 a.m.	Department of Health Creekside Two at CenterPoint 20425 72nd Avenue South Suite 10, Room 307 Kent, WA 98032

If you need further information, please contact Kim-Boi Shadduck, Program Manager, DOH, Orthotics and Prosthetics Advisory Committee, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2912, fax 360-236-2901, email kimboi.shadduck@doh.wa.gov, web www.doh.wa.gov.

Please be advised the orthotics and prosthetics advisory committee is required to comply with the Public Disclosure [Records] Act, chapter 42.56 RCW. This act establishes a strong state mandate in favor of disclosure of public records. As such, the information you submit to the committee, including personal information, may ultimately be subject to disclosure as a public record.

**WSR 21-22-007**

**RULES COORDINATOR  
SECRETARY OF STATE**

[Filed October 21, 2021, 10:21 a.m.]

Pursuant to RCW 34.05.312, the rules coordinator for the office of the secretary of state is Sheri D. Nelson, P.O. Box 40220, Olympia, WA 98504-0220, phone 360-764-0014, email sherid.nelson@sos.wa.gov.

Sheri D. Nelson  
Deputy/Assistant Secretary of State

**WSR 21-22-012**

**NOTICE OF PUBLIC MEETINGS  
CENTER FOR DEAF AND  
HARD OF HEARING YOUTH**

[Filed October 21, 2021, 2:22 p.m.]

The Washington Center for Deaf and Hard of Hearing Youth board of trustees will be cancelling the October 29, 2021, board meeting. We will reconvene virtually on December 3, 2021, for our regularly scheduled board meeting.

**WSR 21-22-016**

**POLICY STATEMENT  
DEPARTMENT OF HEALTH**

[Filed October 22, 2021, 8:24 a.m.]

**NOTICE OF ADOPTION OF A POLICY STATEMENT**

Title of Interpretive Statement: Tax Exemptions for Marijuana Products Sold to Qualifying Patients Possessing Recognition Cards. Policy Number: MMJ 21-01.

Issuing Entity: Department of health.

Subject Matter: Exemption of sales tax and use tax of marijuana products sold by marijuana retailers. For the purposes of RCW 82.08.9888 (1)(a) and 82.12.9998 (1)(a) a "compliant marijuana product" as identified by the department of health in chapter 246-70 WAC is any marijuana product purchased by qualifying patients possessing a recognition card. A "compliant marijuana product" under chapter 246-70 WAC is considered "beneficial for medical use."

Effective Date: October 22, 2021.

Contact Person: Allyson Clayborn, allyson.clayborn@doh.wa.gov, 360-236-2820.

**WSR 21-22-017**

**NOTICE OF PUBLIC MEETINGS  
EMPLOYMENT SECURITY DEPARTMENT  
(Paid Family and Medical Leave Advisory Committee)**

[Filed October 22, 2021, 8:25 a.m.]

**2022 Advisory Committee Meeting Dates**

DATE	TIME	LOCATION
January 14	1:00 - 3:00 p.m. during session	*Meeting will be electronic participation only. Remote participation details are included in the agenda.
February 11	1:00 - 3:00 p.m. during session	*Meeting will be electronic participation only. Remote participation details are included in the agenda.
March 11	1:00 - 3:00 p.m. during session	*Meeting will be electronic participation only. Remote participation details are included in the agenda.
April 8	1:00 - 3:00 p.m. during session	*Meeting will be electronic participation only. Remote participation details are included in the agenda.

DATE	TIME	LOCATION
May 19	9:00 - 11:00 a.m.	*Meeting will be electronic participation only. Remote participation details are included in the agenda.
June 16	9:00 - 11:00 a.m.	*Meeting will be electronic participation only. Remote participation details are included in the agenda.
July 21	9:00 - 11:00 a.m.	To be determined
August 18	9:00 - 11:00 a.m.	To be determined
September 15	9:00 - 11:00 a.m.	To be determined
October 20	9:00 - 11:00 a.m.	To be determined
November 17	9:00 - 11:00 a.m.	To be determined
December 15	9:00 - 11:00 a.m.	To be determined

If you need further information, contact Liz Merrick, 360-764-5021, Elizabeth.merrick@esd.wa.gov, <https://resources.paidleave.wa.gov/advisory-committee>.

### WSR 21-22-019

#### INTERPRETIVE STATEMENT DEPARTMENT OF REVENUE

[Filed October 22, 2021, 12:30 p.m.]

#### INTERPRETIVE STATEMENT ISSUED

The department of revenue has issued the following excise tax advisory (ETA):

#### **ETA 3230.2021 Membership Fees and Dues Allocation**

This ETA provides guidance to taxpayers that have a social, professional, or other bona fide component to the initiation fees and dues they collect from members. This ETA does not address how to determine whether initiation fees and dues are bona fide for purposes of RCW 82.04.4282. Rather, assuming the taxpayer's members pay some portion of their initiation fees and dues solely for the privilege of membership, this ETA provides an acceptable method for determining the amount of initiation fees and dues that taxpayers may deduct under RCW 82.04.4282.

A copy of this document is available via the Internet at Rule and Tax Advisory Adoptions and Repeals.

Atif Aziz  
Tax Policy Manager  
Rules Coordinator

### WSR 21-22-022

#### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed October 22, 2021, 2:30 p.m.]

#### Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the department of social and health services.

#### Economic Services Administration Division of Child Support (DCS)

Document Title: DCS Administrative Policy 1.23: When Staff May Not Participate in Purchasing Property That DCS Has Seized.

Subject: AP 1.23.

Effective Date: October 20, 2021.

Document Description: This DCS administrative policy explains that DCS staff may not participate in purchasing property that DCS has seized pursuant to a collection action.

To receive a copy of the interpretive or policy statements, contact Amy Hahl, DCS, P.O. Box 11520, Tacoma, WA 98411-5520, phone 360-397-9801, TDD/TTY 800-833-6384, fax 360-664-5342, email amy.hahl@dshs.wa.gov, website <http://www.dshs.wa.gov/dcs/>.

### WSR 21-22-025

#### NOTICE OF PUBLIC MEETINGS RECREATION AND CONSERVATION OFFICE

(Habitat and Recreation Lands Coordinating Group)

[Filed October 25, 2021, 10:38 a.m.]

In accordance with gubernatorial Proclamation 2020-28, the habitat and recreation lands coordinating group is **canceling** the regularly scheduled meeting on November 17, 2021:

**FROM:** Habitat and recreation lands coordinating group regular meeting, on November 17, 2021, from 9:00 to 11 a.m., at Room 172, Natural Resource[s] Building, 1111 Washington Street S.E., Olympia, WA 98501.

**TO:** CANCELLED.

For further information, please contact Julia McNamara, Interim Board Liaison, 1111 Washington Avenue [Street] S.E., P.O. Box 40917, Olympia, WA 98504-0917, phone 360-867-8451, fax 360-902-3026, Julia.McNamara@rco.wa.gov, [www.rco.wa.gov](http://www.rco.wa.gov); or Wendy Brown, Policy Director, 1111 Washington Avenue [Street] S.E., P.O. Box 40917, Olympia, WA 98504-0917, phone 360-902-3021, fax 360-902-3026, Wendy.Brown@rco.wa.gov, [www.rco.wa.gov](http://www.rco.wa.gov).

The recreation and conservation office schedules all public meetings at barrier free sites. Persons who need special assistance may contact Leslie Frank at 360-902-0220 or by email at [Leslie.Frank@rco.wa.gov](mailto:Leslie.Frank@rco.wa.gov).

**WSR 21-22-026**  
**NOTICE OF PUBLIC MEETINGS**  
**RECREATION AND CONSERVATION**  
**OFFICE**

(Salmon Recovery Funding Board)

[Filed October 25, 2021, 11:49 a.m.]

The salmon recovery funding board is changing the **time** and **location** of the regular quarterly meeting scheduled for December 1-2, 2021:

**FROM:** December 1 and 2, 2021, from 9:00 a.m. to 5:00 p.m., at Room 172, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA.

**TO:** December 1, 2021, from 9:00 a.m. to **3:30 p.m.**, and December 2, 2021, from 9:00 a.m. to **12:10 p.m.**, at Room 172, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA and online via Zoom, call-in and registration information can be found on recreation and conservation office's (RCO) web page Meetings - RCO (wa.gov).

For further information, please contact Julia McNamara, julia.mcnamara@rco.wa.gov or check RCO's web page at Meetings - RCO (wa.gov).

RCO schedules all public meetings at barrier free sites. Persons who need special assistance may contact Leslie Frank at 360-902-0220 or by email at Leslie.Frank@rco.wa.gov.

**WSR 21-22-028**  
**NOTICE OF PUBLIC MEETINGS**  
**LAKE WASHINGTON**  
**INSTITUTE OF TECHNOLOGY**

[Filed October 25, 2021, 3:17 p.m.]

Lake Washington Institute of Technology has changed the following regular meeting:

From: February 28, 2021, 12 to 5 p.m.

To: April 18, 2021, 2 to 5 p.m.

If you need further information, contact Elsa Gossett, 11605 132nd Avenue N.E., Kirkland, WA 98034, 425-739-8202, elsa.gossett@lwtech.edu, www.lwtech.edu/about/trustees/.

**WSR 21-22-034**  
**NOTICE OF PUBLIC MEETINGS**  
**BELLINGHAM TECHNICAL COLLEGE**

[Filed October 26, 2021, 11:25 p.m.]

**NOTICE**

Cancelled and Rescheduled

The regularly scheduled meeting of the board of trustees of Bellingham Technical College scheduled for Thursday, December 16, 2021, has been **cancelled** and rescheduled for **Thursday, December 9, 2021**, 9:00 - 11:00 a.m. The board of trustees will conduct a study session from 8:15 - 9:00 a.m. to review the Year-7 Accreditation Report; the regular meeting will begin at approximately 9:00 a.m. The meeting will

be conducted via Zoom (<https://btc-tech.zoom.us/j/89330530070>). Call 752-8334 for information.

**WSR 21-22-035**  
**NOTICE OF PUBLIC MEETINGS**  
**MINT COMMISSION**

[Filed October 27, 2021, 8:59 a.m.]

The Washington mint commission will be holding the following regular meetings in 2022.

Wednesday February 23, 2022	1:00 p.m.	Washington Mint Commission Office 6601 West Deschutes Avenue Suite C-2 Kennewick, WA 99336
Tuesday April 12, 2022	6:00 p.m.	Snipes Mountain Brewery and Restaurant 905 Yakima Valley Highway Sunnyside, WA 98944
Tuesday June 7, 2022	3:00 p.m.	Washington State University Irrigated Agriculture Research and Extension Center 24106 North Bunn Road Prosser, WA 99350
Tuesday September 20, 2022	6:00 p.m.	Snipes Mountain Brewery and Restaurant 905 Yakima Valley Highway Sunnyside, WA 98944
Tuesday November 1, 2022	10:00 a.m.	Washington State University Irrigated Agriculture Research and Extension Center 24106 North Bunn Road Prosser, WA 99350
Tuesday December 6, 2022	12:00 p.m. (noon)	Washington mint convention

If you need further information, contact Shane Johnson, 6601 West Deschutes Avenue, Suite C-2, Kennewick, WA 99336, 509-585-5460, 509-585-2671, shanej@agmgt.com.

**WSR 21-22-036**  
**NOTICE OF PUBLIC MEETINGS**  
**ALFALFA SEED COMMISSION**

[Filed October 27, 2021, 9:00 a.m.]

Following is the schedule of regular meetings for the Washington alfalfa seed commission for 2022:

Tuesday	February 1	
Tuesday	May 3	Annual meeting
Tuesday	September 20	
Tuesday	December 13	

If you need further information contact Shane Johnson, 6601 West Deschutes Avenue, [Suite] C-2, Kennewick, WA 99336, 509-585-5460, 509-585-2671, shanej@agmgt.com.

**WSR 21-22-037**  
**NOTICE OF PUBLIC MEETINGS**  
**TURFGRASS SEED COMMISSION**

[Filed October 27, 2021, 9:01 a.m.]

The Washington turfgrass seed commission will hold the following regular meetings in 2022:

Annual meeting	Thursday	February 3
1st quarter	Wednesday	March 2
2nd quarter	Wednesday	June 8
3rd quarter	Wednesday	September 7
4th quarter	Wednesday	December 14

If you need further information contact Shane Johnson, 6601 West Deschutes Avenue, Suite C-2, Kennewick, WA 99336, 509-585-5460, 509-585-2671, shanej@agmgt.com.

**WSR 21-22-039**  
**HEALTH CARE AUTHORITY**

[Filed October 27, 2021, 9:23 a.m.]

**NOTICE**

Title or Subject: Medicaid State Plan Amendment (SPA) 21-0032.

Effective Date: November 1, 2021.

Description: The health care authority (HCA) intends to submit medicaid SPA 21-0032 in order to obtain medicaid funds to reimburse birthing hospitals to support the "rooming in" of the birth parent with their newborn following an in-utero exposure to substances that may lead to physiologic dependence, until the newborn is recovered from neonatal abstinence syndrome (NAS) or neonatal opioid withdrawal syndrome (NOWS) and/or is otherwise ready to be medically discharged. The intent is to provide a newborn administrative day rate or daily reimbursement to help offset the cost of providing the postpartum parent with room and board and limited additional services that are centered on the care and well-being of the newborn.

This SPA reflects HCA's response to SSB 5380 which directed HCA to make recommendations on ways to improve the care of birth parents with opioid use disorder and their newborns. Substantial research indicates that keeping the birth parent with the newborn during the exposed newborn's period of observation and potential withdrawal of neonatal NAS/NOWS as the first-line, nonmedication treatment is associated with better outcomes for both the birth parent and the newborn.

Based on this evidence, HCA recommended that the state authorize HCA to provide funds for the first-line non-medication treatment of newborns by reimbursing birthing hospitals to support the "rooming in" and continuous care from the birth parent for their newborn when there has been in-utero exposure to substances that may lead to physiologic dependence.

SPA 21-0032 is expected to have no effect on the annual aggregate payment for this service. HCA anticipates the increased payment for the administrative day to be offset by a reduction in the length of stay required for infants with

NAS/NOWS. Studies published by the National Association of Neonatal Nurses report a reduction in hospital stay days ranging from 35-74 percent. HCA anticipates shorter stays with a higher payment creating a net effect of \$0.

SPA 21-0032 is in the development process; therefore, a copy is not yet available for review. HCA would appreciate any input or concerns regarding this SPA. To request a copy when it becomes available or submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

CONTACT: Sarah Cook, Financial Services, 626 Eighth Avenue S.E., Olympia, WA 98504, phone 360-725-1577, TTY 711, email sarah.cook@hca.wa.gov.

**WSR 21-22-040**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed October 27, 2021, 10:01 a.m.]

**Notice of Interpretive or Policy Statement**

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the department of social and health services.

**Economic Services Administration**  
**Division of Child Support (DCS)**

Document Title: Administrative Policy 10.0.0: Information Security Definitions.

Subject: Information security.

Effective Date: October 12, 2021.

Document Description: This policy ensures a common understanding of information security (IS) terms references in DCS policy by providing common IS terms.

To receive a copy of the interpretive or policy statements, contact Rachel Shaddox, DCS, P.O. Box 11520, Tacoma, WA 98411-5520, phone 360-664-5073, TDD/TTY 360-753-9122, fax 360-586-3274, email Rachel.Shaddox@dshs.wa.gov, website <http://www.dshs.wa.gov/dcs/>.

**WSR 21-22-044**  
**NOTICE OF PUBLIC MEETINGS**  
**PUGET SOUND**  
**SALMON COMMISSION**

[Filed October 27, 2021, 1:54 p.m.]

**2022 Meeting Schedule**

On Saturday, February 5, 2022, at 10:30 a.m. Meeting will be held virtually.

On Saturday, September 24, 2022, at 10:00 a.m. Meeting will be held virtually.

For more information, please call 509-585-5460 or email [mjohnson@agmgt.com](mailto:mjohnson@agmgt.com).



**WSR 21-22-073**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Filed November 1, 2021, 7:38 a.m.]

**Technical Assistance Advisory (TAA) 2021-05<sup>1</sup>**

The purpose of this TAA is to provide guidance for health carriers<sup>2</sup> on the office of insurance commissioner's (OIC) implementation of the Federal No Surprises Act (FNSA).<sup>3</sup>

<sup>1</sup> This advisory is a policy statement released to advise the public of OIC's current opinions, approaches, and likely courses of action. It is advisory only. RCW 34.05.230(1).

<sup>2</sup> See RCW 48.43.005(28) (defining "health carrier").

<sup>3</sup> See Consolidated Appropriations Act (CAA), 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020) (enacting several new laws, including the No Surprises Act at div. BB, tit. I, 134 Stat. at 2757-2890).

**Background:** Washington's Balance Billing Protection Act (BBPA) bans balance billing for emergency services provided by an out-of-network (OON) hospital or provider, and surgical and ancillary nonemergency services provided by an OON provider at in-network hospitals or ambulatory surgical facilities.<sup>4</sup> Balance billing refers to the practice of OON providers or facilities billing enrollees<sup>5</sup> for health care services provided to the enrollee after the provider or facility's billed amount is not fully reimbursed by the health carrier, exclusive of permitted enrollee cost-sharing.<sup>6</sup> The BBPA requires that the OON provider and health carrier negotiate OON payments in good faith without involving the enrollee.<sup>7</sup> Under the BBPA, the enrollee is only responsible for in-network cost sharing, which must be applied toward the enrollee's deductible and maximum out-of-pocket payment obligation.<sup>8</sup>

<sup>4</sup> RCW 48.49.020(1).

<sup>5</sup> For ease of reading, "enrollee" includes plan participant and beneficiary.

<sup>6</sup> See RCW 48.43.005(5) (defining "balance bill"); see also Requirements Related to Surprise Billing; Part I, 86 Fed. Reg. 36,872, 36,873 (Sept. 13, 2021) (defining "balance billing").

<sup>7</sup> RCW 48.49.030(2).

<sup>8</sup> See RCW 48.43.005(18) (defining "cost sharing"); RCW 48.49.003(2)(b); 48.49.030.

Congress recently passed FNSA, which also bans balance billing, but applies to a broader scope of plans and services than Washington's BBPA. This new law, enacted as part of the broader CCA of 2021, takes effect for health plans, beginning on or after January 1, 2022.<sup>9</sup> It applies to nearly all private health plans offered by employers (including grandfathered health plans and the Federal Employees Health Benefits Program), as well as individual health insurance policies offered both on and off the exchange.<sup>10</sup> In addition to prohibiting balance billing for emergency services, the FNSA extends balance billing protections to post-stabilization services,<sup>11</sup> nonemergency services furnished by OON providers at in-network facilities without the enrollee's informed consent,<sup>12</sup> and services furnished by air ambulance providers.<sup>13</sup>

<sup>9</sup> See CAA, 2021, Pub. L. No. 116-260, div. BB, tit. I (No Surprises Act), sec. 102, 134 Stat. 1182, 2758-2797 (2020); 86 Fed. Reg. at 36,877.

<sup>10</sup> *Id.*

<sup>11</sup> 86 Fed. Reg. at 36,880.

<sup>12</sup> *Id.* at 36,882; section 102 of the No Surprises Act.

<sup>13</sup> See section 105 of the No Surprises Act; 86 Fed. Reg. at 36,876.

Beyond banning balance bills by OON providers and facilities, the FNSA limits enrollee cost-sharing an enrollee must pay the issuer.<sup>14</sup> Enrollees who receive OON care will only have to pay the cost sharing amount that they would have paid if the provider had been in-network.<sup>15</sup> This limitation applies to emergency services, nonemergency services without the patient's informed consent, and air ambulance services.<sup>16</sup> It similarly limits cost-sharing when an enrollee relied on their issuer's provider directory's listing of a provider as in-network, and that information turned out to be incorrect.<sup>17</sup> Any cost-sharing subject to the FNSA must be counted towards an enrollee's in-network deductible and annual out-of-pocket maximum.<sup>18</sup>

<sup>14</sup> See section 102 of the No Surprises Act. For ease of reading, "issuers" in reference to the FNSA includes group health plans, health insurance issuers, and Federal Employees Health Benefits Program carriers.

<sup>15</sup> *Id.*

<sup>16</sup> See sections 102 and 105 of the No Surprises Act; 86 Fed. Reg. at 36,883.

<sup>17</sup> See section 116(b) of the No Surprises Act.

<sup>18</sup> See 86 Fed. Reg. at 36,877.

Additionally, congress set up a regulatory framework for OON provider payment and dispute resolution, and added transparency measures, provider directory requirements, and continuity of care requirements.

**OIC Enforcement:** Aside from a few deferments described in the next section, OIC will enforce the FNSA provisions pertaining to health carriers for health plans starting on or after January 1, 2022.<sup>19</sup> This includes the following provisions of FNSA:

<sup>19</sup> See WAC 284-43-0140 ("Health carriers shall comply with all Washington state and federal laws relating to the acts and practices of carriers and laws relating to health plan benefits.")

- Prohibition on balance billing for emergency services and nonemergency services under FNSA that are broader than the BBPA's scope of services protected from balance billing, including post-stabilization care.<sup>20</sup>
- Prohibition on balance billing for grandfathered health plans.<sup>21</sup>
- Requirements for in-network cost-sharing for enrollees that relied on an issuer's databases, response protocols, or provider directory representations that a provider was in network.<sup>22</sup>
- Prohibition on balance billing for "continuing care patients" for 90 days after a provider becomes OON.<sup>23</sup>
- Providing methods for calculating enrollee cost-sharing and provider payments, and dispute resolution, for: (1) Plans subject to OIC jurisdiction but not the BBPA, e.g., grandfathered health plans; and (2) services subject to the FNSA but not the BBPA, e.g., nonemergency services provided by neonatologists and intensivists.<sup>24</sup>
- Requirements for external review to determine whether balance billing protections are applicable when there is an adverse determination by an issuer.<sup>25</sup>

<sup>20</sup> See e.g., 86 Fed. Reg. at 36,880.

- <sup>21</sup> *Id.* at 36,877.
- <sup>22</sup> See section 116(b) of the No Surprises Act.
- <sup>23</sup> See section 113 of the No Surprises Act.
- <sup>24</sup> See section 103 of the No Surprises Act; 86 Fed. Reg. at 36,886-7; Interim Final Rules, Requirements Related to Surprise Billing; Part II (proposed Sept. 30, 2021), available at: <https://www.cms.gov/files/document/cms-9908-ifc-surprise-billing-part-2.pdf> (implementing independent dispute resolution provisions); see also RCW 48.43.005 (44) and WAC 284-43B-010 (2)(l) (defining "surgical or ancillary services," which are granted balance billing protection under RCW 48.49.020(1)).
- <sup>25</sup> See section 110 of the No Surprises Act.

The FNSA preempts state laws only when those laws impose a requirement that "prevents the application" of the FNSA.<sup>26</sup> Based upon this principle and a few FNSA provisions expressly deferring to state law, OIC will continue to enforce related state laws in four areas: (1) BBPA provisions that exceed FNSA provisions;<sup>27</sup> (2) provider directories;<sup>28</sup> (3) calculation of enrollee cost-sharing;<sup>29</sup> and (4) OON provider payment and dispute resolution processes.<sup>30</sup>

- <sup>26</sup> See 42 U.S.C. § 300gg-23 (a)(1); 86 Fed. Reg. at 36,886.
- <sup>27</sup> *Id.*
- <sup>28</sup> See section 116(a) of the No Surprises Act (deferring to state laws relating to provider directories).
- <sup>29</sup> 86 Fed. Reg. at 36,885.
- <sup>30</sup> *Id.*

As a result, beginning January 1, 2022, until the effective date of any new legislation amending the BBPA, OIC will enforce the following state law provisions:

- Requirements on providers or insurers that go beyond what is required under the new federal law, including:
  - Prohibitions on asking an enrollee to waive their rights.<sup>31</sup>
  - Requirement that a health carrier must indicate in the Health Insurance Portability and Accountability Act (HIPAA) standard 271 transaction whether an enrollee's health plan is subject to the BBPA.<sup>32</sup>
  - Requirement that a health carrier must indicate in the HIPAA standard 835 transaction whether a claim was processed in accordance with the BBPA.<sup>33</sup>
- Requirements for provider directories.<sup>34</sup>
- BBPA's methods for calculating enrollee cost-sharing and OON provider payments, and dispute resolution.<sup>35</sup>

- <sup>31</sup> RCW 48.49.030(1), (5).
- <sup>32</sup> WAC 284-43B-040 (1)(a).
- <sup>33</sup> WAC 284-43B-040 (1)(b).
- <sup>34</sup> See WAC 284-170-260; RCW 48.49.090(1), 48.49.070(3), 48.49.080 (3).
- <sup>35</sup> RCW 48.49.030, 48.49.040; WAC 284-43B-020, 284-43B-030, 284-43B-035.

**Deferred Enforcement:** OIC will defer enforcement against some entities due to jurisdictional limitations, and with respect to some provisions of FNSA in alignment with deferment recently announced by the Departments of Health and Human Services, Labor, and Treasury (collectively referred to as "the departments").

Due to jurisdiction limitations, OIC will defer to other state or federal agencies for enforcement regarding the following entities:

- Air ambulances;<sup>36</sup>
- Self-funded group health plans that have not elected to participate in the BBPA; and
- Health providers and facilities.<sup>37</sup>

- <sup>36</sup> See 86 Fed. Reg. at 36,885.
- <sup>37</sup> Pursuant [to] RCW 48.49.100, OIC will continue to give providers and facilities an opportunity to cure violations of RCW 48.49.020 or 48.49.030.

Additionally, OIC will defer enforcement for some of the FNSA provisions in accordance with the deferred enforcement policy announced by the departments, Aug. 20, 2021, in a set of Frequently Asked Questions ("FAQs").<sup>38</sup> In accordance with these FAQs, OIC will defer enforcement for the following FNSA provisions:

- Requirements for making available a price comparison tool (by internet website, in paper form, or telephone). Deferment will be up until plan years (in the individual market, policy years) beginning on or after January 1, 2023.<sup>39</sup>
- Requirements for providing an advanced explanation of benefits.<sup>40</sup> Deferment will be until regulations fully implementing this requirement are adopted and applicable.

- <sup>38</sup> See "FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 49 (FAQs)," Aug. 20, 2021, available at [https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/FAQs%20About%20ACA%20%26%20CAA%20Implementation%20Part%2049\\_MM%20508\\_08-20-21.pdf](https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/FAQs%20About%20ACA%20%26%20CAA%20Implementation%20Part%2049_MM%20508_08-20-21.pdf). Additionally, the departments announced deferment of a few non-FNSA provisions, namely the requirement that issuers publish machine-readable files relating to prescription drug pricing. *Id.* at 1 (citing 85 Fed. Reg. 72,158 (Nov. 12, 2020); 26 C.F.R. § 54.9815-2715A3 (b)(1)(iii), 29 C.F.R. § 2590.715-2715A3 (b)(1)(iii), and 45 C.F.R. § 147.212 (b)(1)(iii)). Deferment will be until regulations to fully implement this requirement are adopted and applicable. *Id.* at 1-2 (describing deferment). The departments will defer enforcement of the requirement to publish the remaining machine-readable files until July 1, 2022. *Id.* at 2. OIC will similarly defer enforcement.
- <sup>39</sup> *Id.* at 3-4 (citing Internal Revenue Code (Code) § 9819, Employee Retirement Income Security Act (ERISA) § 719, and Public Health Service (PHS) Act § 2799A-4, as added by section 114 of the No Surprises Act).
- <sup>40</sup> *Id.* at 6 (citing Code § 9816(f), ERISA § 716(f), and PHS Act § 2799A-1(f), as added by section 111 of the No Surprises Act).
- <sup>41</sup> *Id.* at 7 (describing deferment).

OIC will continue to enforce any state law counterpart to these FNSA provisions, including, but not limited to the following:

- Requirements for transparency tools for price and quality information.<sup>42</sup>
- Requirements for enrollee notification upon termination of a provider by a health carrier.<sup>43</sup>

- <sup>42</sup> See RCW 48.43.007.
- <sup>43</sup> WAC 284-170-421(10).

The departments also detailed provisions of FNSA<sup>44</sup> that issuers must implement using a good faith, reasonable interpretation of the law, without the guidance of regulations. OIC will enforce the following provisions in the same manner as announced by the departments:

- Requirements to include on any insurance identification card issued to enrollees, any applicable deductibles, any applicable out-of-pocket maximum limitations, and a telephone number and website address for individuals to seek assistance.<sup>45</sup>
- Requirements to establish a process to update and verify the accuracy of provider directory information and to establish a protocol for responding to requests by telephone and electronic communication from an enrollee about a provider's network participation status.<sup>46</sup>
- Prohibition on cost-sharing when an enrollee relied on the issuer's provider directory or response protocol.<sup>47</sup>
- Requirements to make certain disclosures regarding balance billing protections to enrollees.<sup>48</sup>
- Requirements to apply continuity of care protections.<sup>49</sup>

<sup>44</sup> Additionally, the departments detailed a few non-FNSA provisions it will expect issuers to implement using a good faith, reasonable interpretation of the law, including requirements prohibiting gag clauses. See FAQs at 7 (citing Code § 9824, ERISA § 724, and PHS Act § 2799A-9, as added by section 201 of division BB, title II, of CAA). OIC will enforce these provisions in the same manner as the departments.

<sup>45</sup> *Id.* at 4-5 (citing Code § 9816(e), ERISA § 716(e), and PHS Act § 2799A-1(e), as added by section 107 of the No Surprises Act).

<sup>46</sup> *Id.* at 7-8 (citing Code § 9820 (a) and (b), ERISA § 720 (a) and (b), and PHS Act § 2799A-5 (a) and (b), as added by section 116(a) of the No Surprises Act). However, given the deferment to state law in section 116(a) of the No Surprises Act, OIC will only enforce these FNSA provisions against health carriers for plans and services not subject to the BBPA but subject to OIC's jurisdiction, e.g., grandfathered health plans.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 8-9 (citing Code § 9820(c), ERISA § 720(c), and PHS Act § 2799A-5(c), as added by section 116(c) of the No Surprises Act).

<sup>49</sup> *Id.* at 9 (citing Code § 9818, ERISA § 718, and PHS Act § 2799A-3 and 2799B-8, as added by section 113 of the No Surprises Act).

**Consumer Notice:** OIC developed a consumer notice for balance billing rights that satisfies both FNSA and BBPA.<sup>50</sup> OIC's consumer notice should be used for fully insured health plans, PEBB/SEBB plans, and self-funded ERISA plans that have opted into BBPA. Under BBPA, this notice must be provided to enrollees in any communication that authorizes nonemergency surgical or ancillary services at an in-network facility.<sup>51</sup> Also, the issuer must indicate on the enrollee's explanation of benefits whether the service is subject to balance billing protections.<sup>52</sup> OIC will continue to enforce these BBPA consumer notice requirements against health carriers.

<sup>50</sup> <https://www.insurance.wa.gov/surprise-billing-and-balance-billing-protection-act>; see also Code § 9820(c), ERISA § 720(c), and PHS Act § 2799A-5(c), as added by section 116(c) of the No Surprises Act.

<sup>51</sup> See WAC 284-43B-050 (2)(a)(i).

<sup>52</sup> See WAC 284-43B-050 (4)(a).

Please direct any questions about this advisory to Jane Beyer, senior health policy advisor, who may be contacted at [janeb@oic.wa.gov](mailto:janeb@oic.wa.gov), phone 360-725-7043.

## WSR 21-22-074

### NOTICE OF PUBLIC MEETINGS RED RASPBERRY COMMISSION

[Filed November 1, 2021, 10:07 a.m.]

#### 2022 MEETING SCHEDULE

The Washington red raspberry commission will hold the following meetings in 2022. Each meeting begins at 1:00 p.m., with the exception of the annual meeting, which begins at 8:00 a.m. There will be a virtual option for all but the annual meeting.

January 26	Washington Red Raspberry Commission Office 204 Hawley Street Lynden, Washington
April 13	Washington Red Raspberry Commission Office 204 Hawley Street Lynden, Washington
September 7	Washington Red Raspberry Commission Office 204 Hawley Street Lynden, Washington
October 26	Washington Red Raspberry Commission Office 204 Hawley Street Lynden, Washington
November 30 Annual meeting	N.W. Washington Fairgrounds Lynden, Washington

For more information, please contact Henry Bierlink at 360-354-8767 or [henry@red-raspberry.org](mailto:henry@red-raspberry.org).

## WSR 21-22-075

### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed November 1, 2021, 10:25 a.m.]

#### Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the department of social and health services.

#### Economic Services Administration Division of Child Support (DCS)

Document Title: Administrative Policy 1.05: Field Office Closures.



Subject: Field office closures.

Effective Date: October 11, 2021.

Document Description: This administrative policy explains DCS policy for field office closures due to inclement weather, natural disasters, electrical outages, or other emergencies.

To receive a copy of the interpretive or policy statements, contact Amy Hahl, DCS, P.O. Box 11520, Tacoma, WA 98411-5520, phone 360-397-9801, TDD/TTY 800-833-6384, fax 360-664-5342, email amy.hahl@dshs.wa.gov, website http://www.dshs.wa.gov/dcs/.

**WSR 21-22-080**

**INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed November 1, 2021, 2:28 p.m.]

**Notice of Interpretive or Policy Statement**

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the department of social and health services.

**Economic Services Administration  
Division of Child Support (DCS)**

Document Title: DCS Administrative Policy 1.20 Receiving Personal Mail at Work.

Subject: AP 1.20.

Effective Date: October 29, 2021.

Document Description: This DCS administrative policy explains the policy on receiving personal mail at work.

To receive a copy of the interpretive or policy statements, contact Amy Hahl, DCS, P.O. Box 11520, Tacoma, WA 98411-5520, phone 360-664-9801, TDD/TTY 800-833-6384, fax 360-664-5342, email amy.hahl@dshs.wa.gov, website http://www.dshs.wa.gov/dcs/.

**WSR 21-22-081**

**POLICY STATEMENT  
DEPARTMENT OF HEALTH**

[Filed November 1, 2021, 2:28 p.m.]

**NOTICE OF ADOPTION OF A POLICY STATEMENT**

Title of Policy Statement: Provisional Process for Student Interns Registering as Agency Affiliated Counselors. Policy Number: AAC-21-01.

Issuing Entity: Department of health (DOH).

Subject Matter: DOH's provisional process and requirements for student interns to become agency affiliated counselors under E2SHB 1504, pending rule making.

Effective Date: July 25, 2021.

Contact Person: Ted Dale, program manager, ted.dale@doh.wa.gov, 360-236-2991.

**WSR 21-22-086**

**NOTICE OF PUBLIC MEETINGS  
WALLA WALLA  
COMMUNITY COLLEGE**

[Filed November 1, 2021, 5:13 p.m.]

The board of trustees of Walla Walla Community College, District Number Twenty, has made the following change to its regular November meeting:

From: Friday, November 19, 2021.

To: Monday, November 22, 2021.

Please direct any questions to Doreen Kennedy at doreen.kennedy@wwcc.edu or by phone 509-527-4274.

**WSR 21-22-088**

**NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF HEALTH  
(Dental Quality Assurance Commission)**

[Filed November 2, 2021, 7:03 a.m.]

In accordance with the Open Public Meeting[s] Act (chapter 42.30 RCW) and the Administrative Procedure Act (chapter 34.05 RCW), the following is the schedule of regular meetings for the department of health (DOH), dental quality assurance commission, for the year 2022. The dental quality assurance commission meetings are open to the public and access for persons with disabilities may be arranged with advance notice; please contact the staff person below for more information.

Agendas for the meetings listed below are made available in advance via GovDelivery and DOH website (see below). Every attempt is made to ensure that the agenda is up-to-date. However, the dental quality assurance commission reserves the right to change or amend agendas at the meeting.

Date	Time	Location
January 21, 2022	8:30 a.m.	To be determined
March 11, 2022	8:30 a.m.	To be determined
April 29, 2022	8:30 a.m.	To be determined
June 17, 2022	8:30 a.m.	To be determined
July 29, 2022	8:30 a.m.	To be determined
September 9, 2022	8:30 a.m.	To be determined
October 21, 2022	8:30 a.m.	To be determined
December 9, 2022	8:30 a.m.	To be determined

If you need further information, please contact Jennifer Santiago, Health Service Consultant 4, DOH, Dental Quality Assurance Commission, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, fax 360-236-2901, email Jennifer.santiago@doh.wa.gov, web www.doh.wa.gov.

Please be advised the dental quality assurance commission is required to comply with the Public Disclosure [Records] Act, chapter 42.56 RCW. This act establishes a strong state mandate in favor of disclosure of public records. As such, the information you submit to the board, including

personal information, may ultimately be subject to disclosure as a public record.

### WSR 21-22-091

#### NOTICE OF PUBLIC MEETINGS HUMAN RIGHTS COMMISSION

[Filed November 2, 2021, 8:32 a.m.]

The following times, dates, and locations are for commission meetings for 2021:

Washington state human rights commission, commission meeting, November 18, 2021, at 9:30 a.m., via telephone conference, 711 South Capitol Way, Suite 402, Olympia, WA 98504, conference line 360-407-4020, access code 8074251.

Washington state human rights commission, commission meeting, December 16, 2021, at 9:30 a.m., via telephone conference, 711 South Capitol Way, Suite 402, Olympia, WA 98504, conference line 360-407-4020, access code 8074251.

### WSR 21-22-100

#### NOTICE OF PUBLIC MEETINGS COMMUNITY ECONOMIC REVITALIZATION BOARD

[Filed November 2, 2021, 12:22 p.m.]

#### 2022 Meeting Schedule

The community economic revitalization board (CERB) will hold regularly scheduled business meetings on the following dates:

2022 Meetings	Location
January 20, 2022	Lacey Conference Center
March 17, 2022	Lacey Conference Center
May 19, 2022	Lacey Conference Center
July 21, 2022	Lacey Conference Center
September 15, 2022	Lacey Conference Center
November 17, 2022	Lacey Conference Center

The meetings begin at 9:00 a.m.

The link and password to the online meetings will be posted on our website one week prior to each meeting at [www.commerce.wa.gov/cerb](http://www.commerce.wa.gov/cerb).

Please contact the CERB main line at 360-764-9820 for additional information, or find us on the web at [www.commerce.wa.gov/cerb](http://www.commerce.wa.gov/cerb).

### WSR 21-22-102

#### DEPARTMENT OF ECOLOGY

[Filed November 2, 2021, 2:38 p.m.]

#### PUBLIC NOTICE

#### Announcing the Reissuance of the Fresh Fruit Packing General Permit

The Washington state department of ecology (ecology) is reissuing the fresh fruit packing national pollutant discharge elimination system (NPDES) and state waste discharge general permit (permit). The permit becomes effective on January 1, 2022, and expires on December 31, 2026.

**Purpose of the Permit:** The permit addresses various legal requirements and responsibilities, and regulates the discharge of pollutants to protect water quality in Washington state. The permit authorizes the discharge of wastewater associated with the fresh fruit packing industry in Washington state. The permit is a combined NPDES and state waste discharge permit that limits the discharge of pollutants to surface waters under the authority of the Federal Water Pollution Control Act (33 U.S.C. 1251) and limits the discharge of pollutants to surface and groundwater under the authority of the State Water Pollution Control Act (chapter 90.48 RCW).

**Public Notice Process and Comments:** Ecology accepted public comments on the draft permit and fact sheet from September 1, 2021, *through* October 15, 2021. Ecology held informational public workshops and hearings during this time via online statewide webinars on October 6 and 7, 2021. Ecology received written public comments and emails. The comments and ecology's responses are included as Appendix C of the fact sheet.

**Copies of the Permit:** The final permit, fact sheet, and response to comments are available online at <https://ecology.wa.gov/FreshFruitPack>. You may request hard copies from Cynthia Huwe at [cynthia.huwe@ecy.wa.gov](mailto:cynthia.huwe@ecy.wa.gov) or 509-457-7105.

**Applying for Coverage under the Permit:** The fresh fruit packing facilities covered under the existing permit that reapplied for permit coverage will be covered under the new permit. New or unpermitted fresh fruit packing facilities in Washington state may obtain coverage under the permit by submitting a complete permit application to ecology and satisfying all applicable public notice and State Environmental Policy Act requirements (WAC 173-226-200). The application is available online at <https://ecology.wa.gov/FreshFruitPack>.

**Ecology Contact:** Marcia Porter, Washington State Department of Ecology, Central Regional Office, Union Gap, WA 98903-0009, phone 509-454-7864, cellular 509-406-6624 (preferred), email [marcia.porter@ecy.wa.gov](mailto:marcia.porter@ecy.wa.gov).

**Assistance for Persons with Disabilities:** To request ADA accommodation for disabilities, call ecology at 360-407-7285 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington relay service at 711. People with speech disability may call TTY at 877-833-6341.

**En Español:** Para información en español, por favor comuníquese con Marcia Porter al 509-454-7864.

**Your Right to Appeal:** You have a right to appeal the final general permit and general permit coverage for a spe-

cific facility to the pollution control hearings board (PCHB). The appeal process is governed by chapters 43.21B RCW and 371-08 WAC.

- Appeals of the general permit issuance must be filed **within 30 days of issuance** of the general permit. See the *Appeal of the General Permit Focus Sheet* for more information at <https://fortress.wa.gov/ecy/publications/documents/1710009.pdf>.
- Appeals of general permit coverage for a specific facility must be filed **within 30 days of the effective date of coverage**. See the *Appeal of a General Permit Coverage Focus Sheet* for more information at <https://fortress.wa.gov/ecy/publications/documents/1710007.pdf>.
- Please send a copy of the appeal to Damon G. Roberts, 1250 West Alder Street, Union Gap, WA 98903-0009.

If you have questions, please contact Marcia Porter at [marcia.porter@ecy.wa.gov](mailto:marcia.porter@ecy.wa.gov) or 509-454-7864 or cellular (preferred) at 509-406-6624.

"Limited to facilities approved by the Medicaid Agency to provide the services, or in the case of home births, to clients and residences approved for the services. All credentialed midwives participating in home births are Agency approved."

SPA 22-0002 is a "housekeeping" action that does not change current practice or policy. It is therefore expected to have no effect on annual expenditures/reimbursement.

A copy of SPA 22-0002 is available for review. HCA would appreciate any input or concerns regarding this SPA. To request a copy of the SPA or submit comments, please contact the person named below (please note that all comments are subject to public review and disclosure, as are the names of those who comment).

Contact: Melissa Kunder, Health Care Services, 626 8th Avenue S.E., Olympia, WA 98501, TTY 711, email [melissa.kunder@hca.wa.gov](mailto:melissa.kunder@hca.wa.gov).

**WSR 21-22-109**  
**RULES COORDINATOR**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Filed November 2, 2021, 5:08 p.m.]

Pursuant to RCW 34.05.312, the rules coordinator for the office of the insurance commissioner is Ariele Page Landstrom, policy and rules manager, policy and legislative affairs division. Ms. Page Landstrom will be replacing Bryon Welch, deputy commissioner, policy and legislative affairs division.

Contact information is Ariele Page Landstrom, Policy and Rules Manager, Policy and Legislative Affairs Division, email [Ariele.PageLandstrom@oic.wa.gov](mailto:Ariele.PageLandstrom@oic.wa.gov), phone 360-725-7056, Mailing address P.O. Box 40255, Olympia, WA 98504-0255.

Mike Kreidler  
Insurance Commissioner

**WSR 21-22-113**  
**HEALTH CARE AUTHORITY**

[Filed November 3, 2021, 9:04 a.m.]

**NOTICE**

Title or Subject: Medicaid State Plan Amendment (SPA) 22-0002 Nurse Midwife Services.

Effective Date: January 1, 2022.

Description: The health care authority (HCA) intends to submit medicaid SPA 22-0002 to add information regarding nurse midwife services that was inadvertently omitted from Attachment 3.1-A section 17. The SPA will also update the reference to midwives to add "credentialed" to the language in 3.1-A as well as in the corresponding information in 3.1-B, as follows: