

WSR 16-23-033
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed November 8, 2016, 1:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-18-005.

Title of Rule and Other Identifying Information: Amends WAC 181-77-003 and 181-77-014 to clarify requirements for certain career and technical education (CTE) certifications.

Hearing Location(s): ESD 113, 6005 Tyee Drive S.W., Tumwater, WA 98512, on January 12, 2017, at 8:30.

Date of Intended Adoption: January 12, 2017.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by January 5, 2017.

Assistance for Persons with Disabilities: Contact David Brenna by January 5, 2017, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies the work-related experience requirements for CTE certificates. How hours are counted in the requirements is clearly defined.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

November 8, 2016

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-77-003 Definitions. The following definitions shall apply to terms used in this chapter:

(1) "Approved program for training career and technical education teachers and career and technical education counselors" shall be defined as any program approved by the professional educator standards board which complies with chapter 181-77A WAC.

(2) "Career and technical education educator training" shall mean those career and technical education programs, courses, seminars and workshops offered for the purpose of

career and technical education certification in compliance with chapter 181-85 WAC.

(3) "General safety" shall mean course work approved by the professional educator standards board and/or its designee that is designed to provide skill and knowledge common to all career and technical education instructors in safety.

(4) "Specific safety requirements" shall mean completion of course work approved by the professional educator standards board and/or its designee which is designed to provide the career and technical education instructor with the specific skill and knowledge of safety for the occupation he or she is to teach.

(5) "Learning period" shall mean the amount of time required prior to becoming gainfully employed at the journeyman or equivalent level in the occupation being taught. In any case, this shall be no less than one year.

(6) "Management experience" shall mean work as a supervisor, foreman or manager in the occupational area in which the person will instruct.

(7) "Occupational experience" shall mean paid or unpaid volunteer work experience in the career field to be taught.

(8) "One year of occupational experience" shall equal two thousand hours of employment.

(9) "Professional education" shall mean those programs, courses, seminars and workshops that are designed to improve teaching ability.

(10) "Professional experience" shall mean employment in career and technical education in the discipline and/or specialty for which the application has been submitted.

(11) "Quarter hours or the equivalent" shall mean one quarter credit, two-thirds semester credit, ten clock hours or one hundred hours of occupational experience.

(12) "Technical education/upgrading" shall mean those career and technical education programs, courses, seminars and workshops which are designed to improve the skills and/or knowledge in the discipline in which the application is being made.

AMENDATORY SECTION (Amending WSR 08-16-004, filed 7/23/08, effective 8/23/08)

WAC 181-77-014 Requirements for limited certification. (1) Probationary certificate. The probationary certificate is valid for two years and is renewable one time for two additional years upon recommendation of the employing district and verification of CTE program enrollment or completion if the individual has completed the procedures outlined for the first year in the professional growth plan and has made additional progress in meeting the requirements for the initial career and technical education certificate.

The candidate for a probationary certificate must have substantially completed requirements for the initial career and technical education certificate as set forth in WAC 181-77-031 or 181-77-041.

(a) Such a certificate may be issued upon recommendation by the employing school district.

(b) The candidate shall have developed a professional growth plan in cooperation with the career and technical education administrator. The plan must be approved by the local school district career and technical education program advi-

sory committee, to which the candidate is assigned. The plan shall provide for orientation, prior to the commencement of the teaching assignment, in the following:

- (i) Issues related to legal liability;
- (ii) The responsibilities of professional career and technical education educators; and
- (iii) The lines of authority in the employing school district and/or building.

Within the first sixty working days, the plan shall establish procedures for the career and technical education instructor to develop competencies in the following:

- (iv) Career and technical education methods; and
- (v) General and specific safety.

If the candidate does not have access to the required course work within the first ninety working days, the local school district career and technical education advisory committee responsible may authorize the completion of the course work at a later date. The required course work shall be completed prior to the second year of employment.

(vi) The plan shall develop procedures and timelines for the career and technical education instructor to meet the requirements for the initial career and technical education certificate.

(vii) Provided, That candidates for probationary certificates as a coordinator of worksite learning shall successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program and hold a valid probationary career and technical education teacher certificate.

(2) Conditional career and technical education certificate. Notwithstanding other requirements prescribed in this chapter for eligibility for career and technical education certification in the state of Washington, the one-year conditional career and technical education certificate may be issued under specific circumstances set forth below for limited service:

(a) The issuance of the conditional career and technical education certificate may be issued only under unique and special circumstances where no regularly certificated career and technical education instructor is available and is limited to:

- (i) Persons highly qualified and experienced in the knowledge and occupational skills of the career and technical education program to be certified; or
- (ii) Persons who meet the occupational experience requirements for career and technical education certification; or

(iii) Persons who will be employed in new and emerging occupations as identified by the professional educator standards board and/or its designee.

(b) The certificate is issued to individuals who are screened by the local career and technical education administrator and school district superintendent or designee. The local career and technical education administrator or superintendent will verify that the following criteria have been met when requesting the conditional career and technical education certificate:

(i) No person with career and technical education certification in the field is available as verified by the local career and technical education administrator or superintendent;

(ii) The individual is being certified for a limited assignment and responsibility in a specified career and technical education program area;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment and will be apprised of any legal liability, the lines of authority and the duration of the assignment;

(iv) The career and technical education administrator and local program advisory committee will indicate the basis on which he/she has determined that the individual is competent for the assignment;

(v) A written work and/or educational experience training plan as specified in WAC 181-77-014 (1)(b) is on file with the employing district.

(c) The certificate is valid for one school year or less and only for the teaching area specified on the certificate. The certificate may be reissued on application and evidence that requirements continue to be met.

~~((3) Substitute career and technical education certificates. Substitute career and technical education certificates may be issued to candidates who meet the requirements in WAC 181-79A-231(2) or (4).))~~

WSR 16-23-066

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-24—Filed November 14, 2016, 4:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-19-030.

Title of Rule and Other Identifying Information: Adoption of the 2017 commissioner's standard ordinary (CSO) mortality tables.

Hearing Location(s): Office of the Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, WA, on January 5, 2017, at 9:00 a.m.

Date of Intended Adoption: January 6, 2017.

Submit Written Comments to: Jim Keogh, P.O. Box 40260, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by January 4, 2017.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by January 3, 2017, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2017 CSO mortality tables are a new series of mortality tables developed jointly, at the request of the National Association of Insurance Commissioners (NAIC), by the American Academy of Actuaries Life Experience Committee and the Society of Actuaries Preferred Mortality Oversight Group; they reflect changes in mortality since the development of the 2001 CSO tables. The 2001 CSO tables are the current mortality table set; the 2017 tables would provide a new minimum valuation standard of mortality for life insurance products. The new table series includes tables for male/female, smoker/nonsmoker and age-nearest birthday/age-last birth-

day. The commissioner is proposing that the 2017 CSO mortality tables be adopted.

Reasons Supporting Proposal: NAIC adopted these tables earlier this year for life insurance policy use in all fifty states. These tables take effect on or after January 1, 2017 - provided the affected states adopt them. These tables set the national standard for life insurance policies; if Washington state does not adopt them it will make it more difficult for compliant life insurance policies to be issued in this state.

Statutory Authority for Adoption: RCW 48.02.060, 48.74.030, 48.76.050, 48.02.160.

Statute Being Implemented: RCW 48.74.030 and 48.76.050.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Keogh, P.O. Box 40260, Olympia, WA 98504, (360) 725-7056; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504, (360) 725-7117; and Enforcement: AnnaLisa Gellermann, P.O. Box 40255, Olympia, WA 98504, (360) 725-7037.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This regulation is essentially permissive in nature; that is, it allows but does not require an insurer to utilize the 2017 CSO preferred tables as the minimum valuation standard for their life policies. Because this proposed regulation does not require insurers to use these tables it does not impose an unavoidable cost on insurers. Therefore no small business economic impact statement study is needed.

In addition, none of the affected domestic insurers are small business[es] as defined by chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. This regulation adopts NAIC model language and tables without any substantive change; allowance for such adoption is already provided in RCW 48.74.030. In addition, this proposed rule change is essentially permissive in nature in that it allows, but does not require, an insurer to utilize the 2017 CSO mortality tables as the minimum valuation standard for their life policies. Because this proposed regulation does not require insurers to use these tables it does not impose an unavoidable cost on insurers. Therefore no cost-benefit analysis is needed.

November 14, 2016

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-74-525 Purpose. The purpose of this regulation, WAC 284-74-525 through 284-74-555, is to recognize and prescribe the use of the 2017 commissioners standard ordinary (CSO) mortality table in compliance with RCW 48.74.030 (1)(a)(iii), 48.76.050 (4)(h)(vi), and WAC 284-74-340 (1) and (2).

NEW SECTION

WAC 284-74-530 Definitions. (1) "2017 CSO mortality table" means that mortality table, consisting of separate rates of mortality for male and female lives, adopted by the National Association of Insurance Commissioners (NAIC) in April of 2016. The 2017 CSO mortality table is included in the *2015 Proceedings of the NAIC (Fall Volume I)*. Unless the context indicates otherwise, the "2017 CSO mortality table" includes both the ultimate form and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

(2) "2017 CSO mortality table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2017 CSO mortality table.

(3) "2017 CSO mortality table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2017 CSO mortality table.

(4) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(5) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

NEW SECTION

WAC 284-74-535 2017 CSO mortality table. (1) The 2017 commissioners standard ordinary (CSO) mortality table may be used as allowed in RCW 48.74.030 (1)(a)(iii), 48.76.050 (4)(h)(vi), and WAC 284-74-340 (1) and (2), subject to the conditions in this regulation.

(2) An insurer may elect to use the 2017 CSO mortality table as the minimum standard for policies issued on or after January 1, 2017, until January 1, 2020. This table may be used for any one or more specified plans of insurance subject to the conditions in this regulation. If the insurer elects to use the 2017 CSO mortality table, it must do so for both valuation and nonforfeiture purposes.

(3) An insurer must use the 2017 CSO mortality table as the minimum standard for policies issued on or after January 1, 2020.

NEW SECTION

WAC 284-74-540 Conditions. (1) For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

(a) Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;

(b) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by RCW 48.74.070 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

(c) Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

(2) The composite mortality tables must be used for plans of insurance without separate rates for smokers and nonsmokers.

(3) The insurer for each plan of insurance may use the 2017 CSO mortality table in its ultimate or select and ultimate form to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits. This is subject to the restrictions of WAC 284-74-545 and 284-74-300 through 284-74-380 regarding the use of the select and ultimate form.

(4) When the 2017 CSO mortality table is the minimum reserve standard for any plan for an insurer, the actuarial opinion in the annual statement filed with the commissioner must be based on an asset adequacy analysis as specified in WAC 284-07-380. The commissioner may exempt an insurer from this requirement if it only does business in Washington.

NEW SECTION

WAC 284-74-545 Applicability to WAC 284-74-300 through 284-74-380. (1) The 2017 CSO mortality table may be used in applying WAC 284-74-300 through 284-74-380 in the following manner, subject to the transition dates for use of the 2017 CSO mortality table in WAC 284-74-535 of this regulation (unless otherwise noted, the references in this section are to WAC 284-74-300 through 284-74-380):

(a) WAC 284-74-320 (1)(b)(ii): The net level reserve premium is based on the ultimate mortality rates in the 2017 CSO mortality table.

(b) WAC 284-74-330(2): All calculations are made using the 2017 CSO mortality rate, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in (d) of this subsection. The value of " $q_{x+k+t-1}$ " is the valuation mortality rate for deficiency reserves in policy year $k+t$, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

(c) WAC 284-74-340(1): The 2017 CSO mortality table is the minimum standard for basic reserves.

(d) WAC 284-74-340(2): The 2017 CSO mortality table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in WAC 284-74-340 (3)(a) through (i). In demonstrating compliance with those conditions, the demonstrations may not combine either: (i) The results of tests that utilize the 1980 CSO mortality table with those tests that utilize the 2017 CSO mortality table; or (ii) the results of tests that utilize the 2001 CSO mortality table with those tests that utilize the 2017 CSO mortality table, unless the combination is explicitly required by regulation or necessary to be in compliance with relevant actuarial standards of practice.

(e) WAC 284-74-350(3): The valuation mortality table used in determining the tabular cost of insurance is the ultimate mortality rates in the 2017 CSO mortality table.

(f) WAC 284-74-350 (5)(e): The calculations specified in WAC 284-74-350(5) must use the ultimate mortality rates in the 2017 CSO mortality table.

(g) WAC 284-74-350 (6)(e): The calculations specified in WAC 284-74-350(6) must use the ultimate mortality rates in the 2017 CSO mortality table.

(h) WAC 284-74-350 (7)(b): The calculations specified in WAC 284-74-350(7) must use the ultimate mortality rates in the 2017 CSO mortality table.

(i) WAC 284-74-360 (1)(a)(ii): The one-year valuation premium must be calculated using the ultimate mortality rates in the 2017 CSO mortality table.

(2) Nothing in this section expands the applicability of WAC 284-74-300 through 284-74-380 to include life insurance policies exempted under WAC 284-74-320(1).

NEW SECTION

WAC 284-74-550 Gender blended tables. (1) On or after January 1, 2017, an insurer may substitute a blended mortality table for the 2017 CSO mortality table for any ordinary life insurance policy delivered or issued for delivery in this state. The ordinary life policy must have (a) utilized the same premium rates and charges for male and female lives and (b) been issued in circumstances where applicable law does not permit distinctions on the basis of gender. The substituted table may blend the 2017 CSO mortality table (M) and the 2017 CSO mortality table (F) for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. The table may be used for any one or more specified plans of insurance subject to the conditions in this regulation. No change in minimum valuation standards is implied by this subsection.

(2) The insurer may choose from among the blended tables developed by the American Academy of Actuaries CSO task force and adopted by the NAIC in April of 2016. The mortality table chosen must be based on the blend of lives by gender expected for the policies to be issued. The 2017 CSO mortality table (M) and 2017 CSO mortality table (F) may only be used where the proportion of individuals insured is anticipated to be ninety percent or more of one gender or the other.

(3) An insurer shall not use gender blended mortality tables unless:

(a) The Norris decision (Arizona Governing Committee v. Norris, 463 U.S. 1073, 103 S. Ct. 3492, 77 1. Ed 2d 1236 (1983)) or other federal law is known to apply to the policies involved; or

(b) The insurer has a bona fide concern that the Norris decision or other federal law might reasonably be construed to apply by a court having jurisdiction.

(4) It is not a violation of RCW 48.30.300 for an insurer to issue the same kind of policy of life insurance on both a gender distinct and gender neutral basis.

NEW SECTION

WAC 284-74-555 Effective date. The effective date of this regulation is January 1, 2017.

NEW SECTION

WAC 284-74-560 Purpose. The purpose of these rules, WAC 284-74-560 through 284-74-580, is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with RCW 48.74.030 (1)(a)(iii), and WAC 284-74-340 (1) and (2).

NEW SECTION

WAC 284-74-565 Definitions. (1) "2017 CSO mortality table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO task force from the Valuation Basic Mortality Table developed by the Society of Actuaries individual life insurance valuation mortality task force, and adopted by the National Association of Insurance Commissioners (NAIC) in April of 2016. The 2017 CSO mortality table is included in the *2015 Proceedings of the NAIC (Fall Volume I)* and supplemented by the 2017 CSO preferred class structure mortality table defined in subsection (2) of this section. Unless the context indicates otherwise, the 2017 CSO mortality table includes both the ultimate form and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2017 CSO mortality table include the following:

(a) "2017 CSO mortality table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2017 CSO mortality table.

(b) "2017 CSO mortality table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2017 CSO mortality table.

(c) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(d) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(2) "2017 CSO preferred class structure mortality table" means mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2017 CSO nonsmoker and smoker tables, as adopted by the NAIC at the April, 2016 national meeting and published in the *2015 Proceedings of the NAIC (Fall Volume I)*. Unless the context indicates otherwise, the 2017 CSO preferred class structure mortality table includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

(3) "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and his-

tory of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

NEW SECTION

WAC 284-74-570 2017 CSO preferred class structure table. (1) At the election of the company, for each calendar year of issue, for any one or more specific plans of insurance and subject to satisfying the conditions stated in this regulation, the 2017 CSO preferred class structure mortality table may be substituted in place of the 2017 CSO smoker or nonsmoker mortality table as the minimum valuation standard for policies issued on or after January 1, 2017.

(2) For policies issued on or after January 1, 2017, and prior to January 1, 2020, these tables may be substituted with the consent of the commissioner and subject to the conditions of WAC 284-74-575. In determining such consent, the commissioner may rely on the consent of the commissioner of the company's state of domicile. No such election shall be made until the company demonstrates at least twenty percent of the business to be valued on this table is in one or more of the preferred classes.

(3) A table from the 2017 CSO preferred class structure mortality table used in place of a 2017 CSO mortality table, pursuant to the requirements of this rule, will be treated as part of the 2017 CSO mortality table only for purposes of reserve valuation pursuant to the requirements of these rules, WAC 284-74-525 through 284-74-555.

NEW SECTION

WAC 284-74-575 Conditions. (1) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2017 CSO mortality table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2017 CSO mortality table to determine minimum reserves. At the time of election and annually thereafter, for business valued under

the preferred smoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

(3) Unless exempted by the commissioner, every authorized insurer using the 2017 CSO preferred class structure table must annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports must be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

(4) The use of the 2017 CSO preferred class structure table for the valuation of policies issued prior to January 1, 2017, must not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy coinsured, either of the following:

(a) In cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this subsection as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that:

(i) Provides coverage for the period from the next policy premium due date to the earlier of the end of the policy year and the next reinsurance premium due date; and

(ii) Would be refunded to the ceding entity upon the termination of the policy.

(b) In cases where the mode of payment of the reinsurance premium is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this subsection as Z. Z is the amount of the gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of the next reinsurance premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer.

(c) For purposes of this condition, the reserve:

(i) For the mean reserve method must be defined as the mean reserve minus the deferred premium asset; and

(ii) For the midterminal reserve method must include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet

the conditions to use the 2017 CSO preferred class structure table.

NEW SECTION

WAC 284-74-580 Effective date. The effective date of this regulation is January 1, 2017.

WSR 16-23-068

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF HEALTH

(By the Code Reviser's Office)

[Filed November 15, 2016, 10:04 a.m.]

WAC 246-851-370, proposed by the department of health in WSR 16-10-118, appearing in issue 16-10 of the Washington State Register, which was distributed on May 18, 2016, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 16-23-070

PROPOSED RULES DEPARTMENT OF RETIREMENT SYSTEMS

[Filed November 15, 2016, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-095.

Title of Rule and Other Identifying Information: LEOFF Plan 1 Flexible Survivor Option, this amendment will implement chapter 120, Laws of 2016 (ESB 5873), which provides a new window of time for qualified law enforcement officers' and firefighters' (LEOFF) Plan 1 retirees to select a survivor option for a postretirement spouse or registered domestic partner. The amendment also corrects WAC 415-104-202 to reflect that more than one postretirement survivor option may be permitted.

Hearing Location(s): Department of Retirement Systems, Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502, on Wednesday, December 28, 2016, at 10:30 a.m.

Date of Intended Adoption: December 28, 2016.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail jilenes@drs.wa.gov, fax (360) 753-5397, by December 27, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by December 22, 2016, TTY (866) 377-8895 or (360) 586-5450.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Implementation: Seth Miller, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

November 15, 2016
Jilene Siegel
Rules Coordinator

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

WAC 415-104-202 Survivor benefit options—LEOFF Plan 1. (1) **To whom does this section apply?** This section applies to you if you are a retiree of LEOFF Plan 1.

(2) **What are flexible survivor benefit options?** RCW 41.26.164 allows a retiree to provide a survivor option for a spouse who is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161. The survivor option will provide a lifetime benefit for the spouse after the retiree's death.

(3) **How will my monthly retirement ((allowance)) benefit be affected by selecting a flexible survivor option?** Your monthly retirement ((allowance)) benefit will be actuarially reduced beginning the first month following the month in which the department receives the completed form.

(4) **What are the flexible survivor option choices?**

(a) **Joint and whole ((allowance)) benefit option.** The department will pay you a reduced monthly retirement ((allowance)) benefit throughout your lifetime. After your death, the department will pay your surviving spouse a monthly ((allowance)) benefit equal to the gross monthly retirement ((allowance)) benefit you were receiving.

(b) **Joint and one-half ((allowance)) benefit option.** The department will pay you a reduced monthly retirement ((allowance)) benefit throughout your lifetime. After your death, the department will pay your surviving spouse a monthly ((allowance)) benefit equal to one-half of the gross monthly retirement ((allowance)) benefit you were receiving.

(c) **Joint and two-thirds ((allowance)) benefit option.** The department will pay you a reduced monthly retirement ((allowance)) benefit throughout your lifetime. After your death, the department will pay your surviving spouse a monthly ((allowance)) benefit equal to two-thirds (66.667%) of the gross monthly retirement ((allowance)) benefit you were receiving.

(5) **Do I qualify to add a flexible survivor option?** You may select a flexible survivor option if:

(a) Your current spouse is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161;

(b) Some portion of your monthly retirement ((allowance)) benefit is payable to you, after any reduction pursuant to a property division obligation under RCW 41.50.670; and

(c) ((You have not previously selected a flexible survivor option; and

~~(d))~~) You meet the deadline and application requirements in subsection (6) of this section.

(6) **How do I add a flexible survivor option?** You may select a flexible survivor option and name your current spouse as your survivor beneficiary, provided that:

(a) The selection is made((;

~~(i))~~) during a one-year window, on or after the date of the first anniversary and before the second anniversary of the marriage((;

~~(ii) No later than June 30, 2006, if you cannot comply with (a)(i) of this subsection because you were married prior to July 1, 2005), or as otherwise authorized by law;~~

(b) You provide a copy of your certified marriage certificate to the department;

(c) You provide proof, satisfactory to the department, of your current spouse's birth date; and

(d) You file the properly completed forms with the department in a timely manner.

(7) **May I remove the flexible survivor option in the future?** Your choice of a flexible survivor option is irrevocable with the following exceptions:

(a) Your spouse dies before you; or

(b) You and your spouse divorce.

See subsection (8) of this section.

(8) **What happens if my spouse dies before me, or if we divorce?** If your spouse dies before you, or if you divorce, your monthly retirement ((allowance)) benefit will increase, effective the first day of the following month. Your increased monthly ((allowance)) benefit will be the amount you would have received had you not chosen a flexible survivor option plus any cost-of-living adjustments (COLA) you received prior to your spouse's death.

(9) **What happens to my eligible surviving children's share if I select a flexible survivor option?** There is *no* impact to the benefit provided under RCW 41.26.160 or 41.26.161 to surviving children if you select a flexible survivor option.

(10) **Actuarial information.** See chapter 415-02 WAC starting with WAC 415-02-300 for information on how the department uses actuarial factors and schedules to calculate retirement ((allowances)) benefits.

Terms used in this section:

(a) Child or children - RCW 41.26.030(7).

(b) Eligible surviving child - RCW 41.26.160 and 41.26.161.

(c) Eligible surviving spouse - RCW 41.26.161 and 41.26.162.

(d) Surviving spouse - RCW 41.26.030(6).

WSR 16-23-071

PROPOSED RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed November 15, 2016, 1:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-19-005.

Title of Rule and Other Identifying Information: Purchasing service credit in TRS and SERS, this amendment allows TRS and SERS members who work as a substitute and are then hired permanently, to purchase service credit if they worked more than five months of seventy hours as either a substitute or eligible employee.

Hearing Location(s): Department of Retirement Systems, Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502, on Wednesday, December 28, 2016, at 10:30 a.m.

Date of Intended Adoption: December 28, 2016.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail jilenes@drs.wa.gov, fax (360) 753-5397, by December 27, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by December 22, 2016, TTY (866) 377-8895 or (360) 586-5450.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Implementation: Seth Miller, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

November 15, 2016
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-08-055, filed 3/29/13, effective 5/1/13)

WAC 415-110-685 Am I eligible for membership and service credit as a classified substitute employee? You may be eligible to apply for membership and receive service credit for time worked as a classified substitute employee that occurred on or after July 27, 2003.

(1) If you have never been a member of the school employees' retirement system (SERS), you may establish membership in Plan 2 or Plan 3 if you worked as a classified ((substitute)) employee for seventy or more hours per month during at least five months within a single school year period of September 1st through August 31st. Your membership will begin when your first optional bill to purchase substitute teaching service credit is paid in full.

(2) If you have already established membership in SERS Plan 3, or if you have established membership in SERS Plan 2 and have not withdrawn your contributions, you may apply to the department for service credit as described in subsection (4) of this section, for any compensated employment as a classified substitute employee that occurs after your first month of established service credit. You may apply for service credit for compensated employment as a classified sub-

stitute employee that occurred prior to your first month of established service credit if it meets the requirements for membership as described in subsection (1) of this section.

(3) If you previously established membership in SERS Plan 2 and withdrew your contributions, you may reestablish your membership by purchasing service credit if you worked as a classified substitute employee for seventy or more hours per month during at least five months within a single school year period of September 1st through August 31st.

(4) To apply, you must submit a classified substitute's application for service credit.

(a) Applications must be submitted no earlier than September 1st following the end of the school year in which you worked.

(b) If you are establishing membership in SERS for the first time, you must also submit a member information form to indicate your selection of Plan 2 or Plan 3.

(c) If you are an established Plan 3 member, you must also submit a member information form to indicate your contribution rate and investment options.

(d) If you are purchasing service credit for the 2003-04 school year, you must also submit quarterly reports to DRS along with your application for service credit. Quarterly reports must show the exact hours worked and compensation earned each month, and must be signed by the employer.

(5) To receive classified substitute employee's service credit, you must pay the appropriate member contributions.

(a) Upon receipt of your application materials, the department will determine the amount of service credit you are eligible to purchase and will provide an optional bill for the amount due. Your service credit will be applied when the bill is paid in full.

(b) You have six months following the end of the school year in which you worked to pay the member contributions interest-free. Interest will begin to accrue on the first day of the seventh month following the end of the school year. The school year ends on August 31st for Plans 2 and 3.

(i) SERS Plan 2. If payment is received after the six month interest-free period, the amount due will include interest on both the member and employer contributions.

(ii) SERS Plan 3. If payment is received after the six month interest-free period, the amount due will include interest on the Plan 3 employer contributions.

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

(a) "Classified employee" - RCW 41.35.010(7).

(b) "Member" - RCW 41.35.010(20).

(c) "Service" - RCW 41.35.010(32).

(d) "Substitute employee" - RCW 41.35.010(38).

AMENDATORY SECTION (Amending WSR 13-08-055, filed 3/29/13, effective 5/1/13)

WAC 415-112-140 Am I eligible for membership and service credit as a substitute teacher? (1) If you have never been a member of the teachers' retirement system (TRS), you may establish membership in Plan 2 or Plan 3 if you worked as a ((substitute)) teacher for seventy or more hours per month during at least five months within a single school year period of September 1st through August 31st, during the

1991-92 school year or later. You may apply for membership for work prior to the 1991-92 school year if it meets the membership requirements in effect when the work was performed. Your membership will begin when your first optional bill to purchase substitute teaching service credit is paid in full.

(2) If you have already established membership and have not withdrawn your contributions, you may be eligible to purchase service credit for working as a substitute teacher.

(a) TRS Plan 1. If you are a Plan 1 member, you may apply to the department for service credit as a substitute teacher for any school year during which you worked a minimum of twenty full-time days between July 1st and June 30th.

(b) TRS Plan 2 or Plan 3. If you are a Plan 2 or Plan 3 member, you may apply to the department for service credit as described in subsection (4) of this section, for any compensated employment as a substitute teacher that occurs after your first month of established service credit. You may apply for service credit for compensated employment as a substitute teacher that occurred prior to your first month of established service credit if it meets the requirements for membership as described in subsection (1) of this section.

(3) If you previously established membership and withdrew your contributions, you may purchase service credit as a substitute teacher if you meet the criteria in this subsection.

(a) TRS Plan 1. You may reestablish membership in TRS Plan 1 if you worked as a substitute teacher for the equivalent of ninety full-time days within a single school year period of July 1st through June 30th.

(b) TRS Plan 2. You may reestablish membership in TRS Plan 2 if you worked as a substitute teacher as described in subsection (1) of this section.

(c) TRS Plan 3. If you are a Plan 3 member and withdrew your contributions, you may apply to the department for service credit for any compensated employment as a substitute teacher that occurred after your first month of established service credit. You may apply for service credit for compensated employment as a substitute teacher that occurred prior to your first month of established service credit if it meets the requirements for membership as described in subsection (1) of this section.

(4) To apply, you must submit a substitute teacher's application for service credit.

(a) Applications must be submitted no earlier than the end of your plan's school year in which you worked. The school year ends on June 30th for Plan 1, and August 31st for Plans 2 and 3.

(b) If you are establishing membership in TRS for the first time, you must also submit a member information form to indicate your selection of Plan 2 or Plan 3.

(c) If you are an established Plan 3 member, you must also submit a member information form to indicate your contribution rate and investment options.

(d) If you are purchasing service credit for a period prior to the 2004-05 school year, or for work performed for a higher education employer or for the Washington state center for childhood deafness and hearing loss or the school for the blind, you must also submit quarterly reports to DRS along with your application for service credit. Quarterly reports

must show the exact hours worked and compensation earned each month, and must be signed by the employer.

(5) To receive substitute teacher's service credit, you must pay the appropriate member contributions.

(a) Upon receipt of your application materials, the department will determine the amount of service credit you are eligible to purchase and will provide an optional bill for the amount due. Your service credit will be applied when the bill is paid in full.

(b) You have six months following the end of the school year in which you worked to pay the member contributions interest-free. Interest will begin to accrue on the first day of the seventh month following the end of the school year. The school year ends on June 30th for Plan 1, and August 31st for Plans 2 and 3.

(i) TRS Plan 1 or Plan 2. If payment is received after the six month interest-free period, the amount due will include interest on both the Plan 1 or Plan 2 member and employer contributions.

(ii) TRS Plan 3. If payment is received after the six month interest-free period, the amount due will include interest on the Plan 3 employer contributions.

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

(a) "Member" - RCW 41.32.010(25).

(b) "Service" - RCW 41.32.010(43).

(c) "Substitute teacher" - RCW 41.32.010(48).

WSR 16-23-083

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed November 16, 2016, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-02-038.

Title of Rule and Other Identifying Information: Chapter 182-554 WAC, Enteral nutrition program.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on December 27, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than December 28, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on December 27, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by December 23, 2016, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are being revised to simplify language, reorganize the chapter,

and replace outdated references (for example, references to Title 388 WAC and medical assistance administration). Other revisions include, but are not limited to:

- Revising WAC 182-554-500 to include requirements regarding registered dietitian evaluations and record-keeping for WIC clients and amended authorization requirements and clinical criteria.
- Revising WAC 182-554-400 to add requirements for a valid prescription and proof of delivery.
- Moving requirements for clients with specific medical conditions who need oral enteral nutrition from WAC 182-554-500 to new WAC 182-554-525 and 182-554-550.
- Revising WAC 182-554-600 to add requirements for recordkeeping for WIC clients.
- Moving requirements for submitting and completing the prior authorization request form from WAC 182-554-500 to the authorization section WAC 182-554-700.

Reasons Supporting Proposal: Adding authorization requirements to WAC 182-554-525 is necessary to protect clients under one year of age who are receiving thickeners. The Federal Drug Administration has issued a warning not to give babies thickeners, particularly those born prematurely, because there is substantive evidence it puts them at risk of necrotizing enterocolitis. The recommendation is supported by American Academy of Pediatrics. The agency previously filed these proposed rules under WSR 15-24-035 and held a public hearing. As a result of stakeholder comments, the agency has revised the proposed rules and is holding another public hearing.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 2716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Jean Gowen, P.O. Box 5506, Olympia, WA 98504-5506, (360) 725-2005.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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

November 16, 2016

Wendy Barcus

Rules Coordinator

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

WAC 182-554-100 Enteral nutrition—General. (1) The ((department)) agency covers the enteral nutrition products, equipment, and related supplies listed in this chapter,

according to ((department)) medicaid agency rules and subject to the limitations and requirements in this chapter.

(2) The ((department)) agency pays for covered enteral nutrition products, equipment and related supplies ((when)) if they are:

(a) ((Covered;

(b)) Within the scope of the eligible client's medical care program;

((e)) (b) Medically necessary ((as defined)) under WAC ((388-500-0005)) 182-500-0070; and

((d)) (c) Authorized and billed, as required within this chapter, chapters ((388-501 and 388-502)) 182-501 and 182-502 WAC, and the ((department's)) agency's published billing instructions ((and numbered memoranda; and

(e) Billed according to this chapter, chapters 388-501 and 388-502, and the department's published billing instructions and numbered memoranda)).

(3) The ((department)) agency requires prior authorization (PA) for covered enteral nutrition products, equipment and related supplies when the clinical criteria ((set forth)) described in this chapter are not met, including the criteria associated with the expedited prior authorization process. The ((department)) agency evaluates requests requiring ((prior authorization)) PA on a case-by-case basis to determine whether they are medically necessary((; according to the process found in WAC 388-501-0165)) under WAC 182-501-0165.

(4) The ((department)) agency evaluates a request for a covered service that is ((in a covered category, but has been determined to be)) experimental or investigational ((per WAC 388-531-0550, under the provisions of WAC 388-501-0165)) under WAC 182-531-0550 and 182-501-0165.

(5) The ((department)) agency may terminate((s)) a provider's ((participation with the department according to chapter 388-502 WAC)) core provider agreement under chapter 182-502 WAC.

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

WAC 182-554-200 Enteral nutrition—Definitions. The following terms and definitions and those found in chapter 182-500 WAC ((388-500-0005)) apply to this chapter:

"BMI" see "body mass index."

"Body mass index (BMI)" - Means a number that shows body weight relative to height, and is calculated using inches and pounds or meters and kilograms.

(("Department"—The department of social and health services (DSHS).)) "Dietitian" - Means a dietitian who is registered with the Academy of Nutrition and Dietetics and who is certified by the Washington state department of health (DOH).

"Enteral nutrition" - Means the use of medically necessary nutritional products alone, or in combination with traditional food, when a client is unable to consume enough traditional food to meet nutritional requirements. Enteral ((nutritional solutions can be given)) nutrition may be provided orally or via feeding tube((s)).

"Enteral nutrition equipment" - Means durable medical feeding pumps and intravenous (IV) poles used in con-

junction with nutrition supplies to dispense formula to a client.

"Enteral nutrition product" - ~~((Enteral nutrition formulas and/or products))~~ Means formulas or solutions that help a person meet nutritional requirements.

"Enteral nutrition supplies" - Means the supplies, such as nasogastric, gastrostomy and jejunostomy tubes, necessary to allow nutritional support via the alimentary canal or any route connected to the gastrointestinal system.

"Growth chart" - Means a series of percentile curves that illustrate the distribution of select body measurements (i.e., length, height, weight, and age) in children published by the World Health Organization (WHO), and Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (~~(- CDC growth charts: United States: http://www.cdc.gov/growthcharts/~~

"Nonfunctioning digestive tract" - Caused by a condition that affects the body's alimentary organs and their ability to break down, digest, and absorb nutrients).

"Orally administered enteral nutrition products" - ~~((Enteral nutrition))~~ Means formulas or solutions ((and products)) that a ((client)) person consumes orally for nutritional support.

"Tube-((delivery)) delivered enteral nutrition products" - ~~((The provision of))~~ Means the nutritional ((requirements)) support that a person receives through a tube into ((the)) a person's stomach or small intestine.

"Women, infants, and children (WIC) program" (Also known as WIC program) - ~~((A special supplemental nutrition program managed by the department of health (DOH) that serves to safeguard the health of children up to age five and low-income pregnant and breastfeeding women who are at nutritional risk, by providing them with healthy, nutritious foods to supplement diets, information on healthy eating, and referral to health care.))~~ See WAC 246-790-001.

AMENDATORY SECTION (Amending WSR 14-07-042, filed 3/12/14, effective 4/12/14)

WAC 182-554-300 Enteral nutrition—Client eligibility. (1) To receive oral or tube-delivered enteral nutrition products, equipment, and related supplies, a person must be eligible for one of the Washington apple health programs ~~((listed in the table in))~~ under WAC 182-501-0060 or be eligible for the alien emergency medical (AEM) program ~~((see))~~ under WAC 182-507-0110((+)).

(2) For persons who reside in a nursing facility, adult family home, assisted living facility, boarding home, or any other residence where the provision of food is included in the daily rate, oral enteral nutrition products are the responsibility of the facility ~~((to provide in accordance with))~~ under chapters 388-76, 388-97 and 388-78A WAC.

(3) For persons who reside in a state-owned facility (i.e., state school, developmental disabilities ~~((DD))~~ facility, mental health facility, Western State Hospital, and Eastern State Hospital) enteral nutrition products, equipment, and related supplies are the responsibility of the state-owned facility to provide.

(4) ~~((Persons who have elected and are eligible))~~ A person who has elected to receive the ((department's)) agency's

hospice benefit must arrange for enteral nutrition products, equipment and related supplies directly through the hospice benefit.

(5) ~~((Children who qualify))~~ A child who qualifies for supplemental nutrition from the women, infants, and children (WIC) program must receive supplemental nutrition directly from that program ((unless the person meets the limited circumstances in WAC 182-554-500(1)(d)). The child may be eligible to receive enteral products from the agency if:

(a) The child's need for a product exceeds WIC's allowed amount; or

(b) The product is not available through the WIC program.

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

WAC 182-554-400 Enteral nutrition—Provider requirements. (1) The following providers are eligible to enroll~~((+))~~ or contract with the ~~((department))~~ medicaid agency to provide orally administered ~~((enteral nutrition products))~~ and tube-delivered enteral nutrition products, equipment, and related supplies:

(a) A pharmacy provider; or

(b) A durable medical equipment ~~((DME))~~ provider.

(2) To receive payment for orally administered ~~((enteral nutrition products and))~~ or tube-delivered enteral nutrition products, equipment and related supplies, a provider must:

(a) Meet the requirements ~~((in))~~ under chapters ~~((388-501 and 388-502 WAC;))~~ 182-501 and 182-502 WAC.

(b) Provide only those services that are within the scope of the provider's license((:)).

(c) Obtain prior authorization from the ~~((department))~~ agency, if required, before delivery to the client and before billing the ~~((department;))~~ agency.

(d) Deliver enteral nutritional products in quantities sufficient to meet the client's authorized needs, not to exceed a one-month supply((:)).

(e) Confirm with the client or the client's caregiver that the next month's delivery of authorized orally administered enteral nutrition products is necessary and document the confirmation in the client's file. The ~~((department))~~ agency does not pay for automatic periodic delivery of products((:)).

(f) Furnish clients with new or used equipment that includes full manufacturer and dealer warranties for at least one year((; and)).

(g) Notify the client's ~~((physician))~~ primary care provider if the client has indicated the enteral nutrition product is not being used as prescribed and document the notification in the client's file.

(h) Have a valid prescription. To be valid, a prescription must be:

(i) Written, dated and signed (including the prescriber's credentials) by the prescriber on or before the date of delivery of the product, equipment or related supplies;

(ii) No older than one year from the date the prescriber signed the prescription; and

(iii) State the specific item or service requested, the client's diagnosis and estimated length of need, quantity and units of measure, frequency and directions for use.

(i) Have proof of delivery.

(i) When a client or the client's authorized representative receives the product directly from the provider, the provider must furnish the proof of delivery upon agency request. The proof of delivery must:

(A) Be signed and dated by the client or the client's authorized representative. The date of the signature must be the date the item was received by the client; and

(B) Include the client's name and a detailed description of the item(s) delivered, including the quantity and brand name.

(ii) When a provider uses a shipping service to deliver items, the provider must furnish proof of delivery upon agency request. The proof of delivery must include:

(A) The client's name or other client identifier;

(B) The delivery service package identification number;

(C) The delivery address; and

(D) The quantity, a detailed description, and brand name of the item being shipped.

(j) Bill the agency with the following dates of service:

(i) If the provider used a shipping service, the provider must use the shipping date as the date of service; or

(ii) If the client or the client's authorized representative received the product directly from the provider, the provider must use the date of receipt as the date of service.

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

WAC 182-554-500 Covered orally administered enteral nutrition products, equipment and related supplies(~~—Orally administered~~)—Clients age twenty ((years of age)) and younger only. (~~(1)~~) ~~The department covers orally administered enteral nutrition products for clients twenty years of age and younger only, as follows:~~

(a) ~~The client's nutritional needs cannot be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs;~~

(b) ~~The client is able to manage their feedings in one of the following ways:~~

(i) ~~Independently; or~~

(ii) ~~With a caregiver who can manage the feedings; and~~

(c) ~~The client meets one of the following clinical criteria:~~

(i) ~~Acquired immune deficiency syndrome (AIDS). Providers must obtain prior authorization to receive payment. The client must:~~

(A) ~~Be in a wasting state;~~

(B) ~~Have a weight for length less than or equal to the fifth percentile if the client is three years of age or younger; or~~

(C) ~~Have a body mass index (BMI) of:~~

(I) ~~Less than or equal to the fifth percentile if the client is four through seventeen years of age; or~~

(II) ~~Less than or equal to 18.5 if the client is eighteen through twenty years of age; or~~

(D) ~~Have a BMI of:~~

(I) ~~Less than or equal to twenty five; and~~

(II) ~~An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.~~

(ii) ~~Amino acid, fatty acid, and carbohydrate metabolic disorders:~~

(A) ~~The client must require a specialized nutrition product; and~~

(B) ~~Providers must follow the department's expedited prior authorization process to receive payment.~~

(iii) ~~Cancer(s):~~

(A) ~~The client must be receiving chemotherapy and/or radiation therapy or post-therapy treatment;~~

(B) ~~The department pays for orally administered nutritional products for up to three months following the completion of chemotherapy or radiation therapy; and~~

(C) ~~Providers must follow the department's expedited prior authorization process to receive payment.~~

(iv) ~~Chronic renal failure.~~

(A) ~~The client must be receiving dialysis and have a fluid restrictive diet in order to use nutrition bars; and~~

(B) ~~Providers must follow the department's expedited prior authorization process to receive payment.~~

(v) ~~Decubitus pressure ulcers.~~

(A) ~~The client must have stage three or greater decubitus pressure ulcers and an albumin level of 3.2 or below; and~~

(B) ~~Providers must follow the department's expedited prior authorization process to receive a maximum of three month's payment.~~

(vi) ~~Failure to thrive or malnutrition/malabsorption as a result of a stated primary diagnosed disease.~~

(A) ~~The provider must obtain prior authorization to receive payment; and~~

(B) ~~The client must have:~~

(I) ~~A disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment; and~~

(II) ~~A weight for length less than or equal to the fifth percentile if the client is two years of age or younger; or~~

(III) ~~A BMI of:~~

(aa) ~~Less than or equal to the fifth percentile if the client is three through seventeen years of age; or~~

(bb) ~~Less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen through twenty years of age; or~~

(IV) ~~Have a BMI of:~~

(aa) ~~Less than or equal to twenty five; and~~

(bb) ~~An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.~~

(vii) ~~Medical conditions (e.g., dysphagia) requiring a thickener.~~

(A) ~~The client must:~~

(I) ~~Require a thickener to aid in swallowing or currently be transitioning from tube feedings to oral feedings; and~~

(II) ~~Be evaluated by a speech therapist or an occupational therapist who specializes in dysphagia. The report recommending a thickener must be in the client's chart in the prescriber's office.~~

(B) ~~Providers must follow the department's expedited prior authorization process to receive payment.~~

(d) If four years of age or younger.

(i) The client must:

(A) Have a certified registered dietitian (RD) evaluation with recommendations which support the prescriber's order for oral enteral nutrition products or formulas; and

(B) Have a signed and dated written notification from WIC indicating one of the following:

(I) Client is not eligible for the women, infants, and children (WIC) program; or

(II) Client is eligible for WIC program, but the need for the oral enteral nutrition product or formula exceeds WIC's allowed amount; or

(III) The requested oral enteral nutrition product or formula is not available through the WIC program. Specific, detailed documentation of the tried and failed efforts of similar WIC products, or the medical need for alternative products must be in the prescriber's chart for the client; and

(C) Meet one of the following clinical criteria:

(I) Low birth weight (less than 2500 grams);

(II) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(III) Failure to gain weight on two successive measurements, despite dietary interventions; or

(IV) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(e) If five years of age through twenty years of age.

(i) The client must:

(A) Have a certified RD evaluation, for eligible clients, with recommendations which support the prescriber's order for oral enteral nutrition products; and

(B) Meet one of the following clinical criteria:

(I) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(II) Failure to gain weight on two successive measurements, despite dietary interventions; or

(III) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(2) Requests to the department for prior authorization for orally administered enteral nutrition products must include a completed Oral Enteral Nutrition Worksheet Prior Authorization Request (DSHS 13-743), available for download at: <http://www1.dshs.wa.gov/msa/forms/eforms.html>. The DSHS 13-743 form must be:

(a) Completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), verifying all of the following:

(i) The client meets the requirements listed in this section;

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client eighteen through twenty years of age, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than eighteen years of age, the client's growth history and a comparison to expected weight gain, and:

(A) An evaluation of the weight-for-length percentile if the client is three years of age or younger; or

(B) An evaluation of the BMI if the client is four through seventeen years of age.

(vi) The client's medical condition and the exact daily caloric amount of needed enteral nutrition product;

(vii) The reason why the client is unable to consume enough traditional food to meet nutritional requirements;

(viii) The medical reason the specific enteral nutrition product, equipment, and/or supply is prescribed;

(ix) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate;

(x) The number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required; and

(xi) The client's likely expected outcome if enteral nutritional support is not provided.

(b) Written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the enteral nutrition product, equipment, or related supply. This form must not be back-dated; and

(c) Be submitted within three months from the date the prescriber signs the prescription.

(3) Clients twenty years of age and younger must be evaluated by a certified RD within thirty days of initiation of enteral nutrition products and periodically (at the discretion of the certified RD) while receiving enteral nutrition products. The certified RD must be a current provider with the department.) (1) Subject to the prior authorization requirements and limitations in this section, and in the *Enteral Nutrition Program Billing Guide*, the agency covers orally administered enteral nutrition products for clients age twenty and younger.

(2) The agency's enteral nutrition program is not a food benefit. All clients under age five who qualify for supplemental nutrition from the women, infants, and children (WIC) nutrition program must receive products and formulas directly from that program. The agency may cover orally administered enteral nutrition products for a client under age five if the client has a WIC information form that verifies:

(a) The client is not eligible for the WIC program;

(b) The client is eligible for the WIC program, but the client's need for an oral enteral nutrition product or formula exceeds the amount allowed by WIC rules; or

(c) The client is eligible for the WIC program, but a medically necessary product or formula is not available through the WIC program.

(3) With expedited prior authorization, the agency covers orally administered enteral nutrition products for a one-time, initial one-month supply if the client:

(a) Has or is at risk of growth or nutrient deficits due to a condition that prevents the client from meeting their needs

using food, over-the-counter nutrition products, standard infant formula, or standard toddler formula; and

(b) Has a valid prescription that indicates the product is medically necessary as defined in WAC 182-500-0070.

(4) With prior authorization (PA), the agency covers a monthly supply of orally administered enteral nutrition products if the client:

(a) Has or is at risk of growth or nutrient deficits due to a condition that prevents the client from meeting their needs using food, over-the-counter nutrition products, standard infant formula, or standard toddler formula;

(b) Has a valid prescription that states the product is medically necessary as defined in WAC 182-500-0070; and

(c) Has a nutrition assessment from a registered dietitian (RD) that includes all of the following:

(i) Evaluation of the client's nutritional status, including growth and nutrient analysis;

(ii) An explanation about why the product is medically necessary as defined in WAC 182-500-0070;

(iii) A nutrition care plan that monitors the client's nutrition status, and includes plans for transitioning the client to food or food products, if possible; and

(iv) Recommendations, as necessary, for the primary care provider to refer the client to other health care providers (for example, gastrointestinal specialists, allergists, speech therapists, occupational therapists, applied behavioral analysis providers, and mental health providers) who will address the client's growth or nutrient deficits as described in (a) of this subsection, and facilitate the client's transition to food or food products.

(5) If a client requires orally administered enteral nutrition products for longer than one month, the client must continue to meet criteria in subsection (4) of this section and receive periodic reevaluations from an RD. Periodic reevaluations:

(a) Must be performed at least three times a year for a client age three or younger;

(b) Must be performed at least two times a year for a client older than age three; and

(c) May be performed face-to-face, or by medical record and growth data review and phone contact with the client or the client's caregiver.

(6) If a client requires orally administered enteral nutrition products for longer than one month, the DME or pharmacy provider must obtain PA from the agency. The request for PA must include all of the following:

(a) Documentation of the client's diagnosis that supports the client's need for the orally administered enteral nutrition product;

(b) The client's nutrition care plan, which must monitor the client's nutrition status, and transition the client to food or food products, if possible, or document why the client cannot transition to food or food products;

(c) Updates to the client's nutrition care plan resulting from subsequent reevaluations;

(d) Updates to the client's growth chart;

(e) Documentation that shows through regular follow up and weight checks how the prescribed product is treating the client's growth or nutrient deficits, or is necessary to maintain the client's growth or nutrient status;

(f) Referrals, if necessary, to other health care providers (for example, gastrointestinal specialists, allergists, speech therapists, occupational therapists, applied behavioral analysis providers, and mental health providers) and show communication of recommendations and treatment plans for the client; and

(g) Documentation of any communication the treating provider has had with other providers, such as those in subsection (4)(c)(iv) of this section, directly or indirectly treating the client's growth or nutrient deficits while the client is receiving orally administered enteral nutrition products.

NEW SECTION

WAC 182-554-525 Covered orally administered enteral nutrition products, equipment and related supplies—Thickeners. (1) The medicaid agency covers, with prior authorization (PA) thickeners for clients with dysphagia who are younger than age one. The request for PA must include:

(a) Proof the client has dysphagia as documented by a speech therapist or an occupational therapist that specializes in dysphagia;

(b) A dysphagia diet plan and assessment for the client from a registered dietitian; and

(c) Documented medical necessity. The report recommending a thickener must be in the client's chart in the prescriber's office.

(2) The agency covers, with expedited prior authorization (EPA), thickeners for clients with dysphagia who are older than age one. The provider must keep the following in the client's file:

(a) Proof the client has dysphagia as documented by a speech therapist or an occupational therapist that specializes in dysphagia;

(b) A dysphagia diet plan and assessment for the client from a registered dietitian; and

(c) Documented medical necessity. The report recommending a thickener must be in the client's chart in the prescriber's office.

NEW SECTION

WAC 182-554-550 Covered orally administered enteral nutrition products, equipment and related supplies—Clients with amino acid, fatty acid, and carbohydrate metabolic disorders, and phenylketonuria. (1) The medicaid agency covers orally administered enteral nutrition products, equipment and related supplies for clients who have amino acid, fatty acid, and carbohydrate metabolic disorders, including phenylketonuria (PKU), if the client requires a specialized nutrition product.

(2) Providers must use the agency's authorization processes as follows:

(a) Providers must use the expedited prior authorization (EPA) process for clients age twenty and younger.

(b) Providers may use the exception to rule process for clients age twenty-one and older.

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

WAC 182-554-600 Covered enteral nutrition products, equipment and related supplies—Tube-delivered.

(1) ~~(The department)~~ **General.** The agency covers tube-delivered enteral nutrition products, equipment, and related supplies, ~~((without prior authorization, for eligible clients))~~ regardless of age ~~((, as follows:~~

~~(a) When the client meets the following clinical criteria:~~
~~(i) The client)) if the client:~~

~~(a) Has a valid prescription under WAC 182-554-400, which must be submitted within three months of the date the prescriber signed the prescription;~~

~~((A) To be valid, a prescription must:~~

~~(i) Be written by a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PA-C);~~

~~(ii) Be written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the supply, equipment, or device. Prescriptions must not be back-dated;~~

~~(iii) Be submitted within three months from the date the prescriber signs the prescription; and~~

~~(iv) State the specific product requested, diagnosis, estimated length of need (months), and quantity.~~

~~(ii) The client is able to)) (b) Can manage ((his or her) tube feedings ((in one of the following ways)):~~

~~((A)) (i) Independently; or~~

~~((B)) (ii) With a ((caregiver who can manage the feedings)) caregiver's assistance; and~~

~~((iii) The client)) (c) Has at least one of the following medical conditions:~~

~~((A) A nonfunction or)) (i) A disease or ((clinical)) condition that impairs the client's ability to ingest sufficient calories and nutrients ~~((from products orally or does not permit sufficient))~~ or restricts calories and nutrients from ~~((food to reach the))~~ reaching the client's gastrointestinal tract; or~~

~~((B)) (ii) A disease or condition of the small bowel that impairs digestion and absorption of an oral diet, either of which requires tube feedings to provide sufficient nutrients to maintain weight and strength that is properly proportioned to the client's overall health status.~~

~~((b) With the following limitations:~~

~~(i)) (2) **Limitations.** The following limitations apply to the agency's payment for covered tube-delivered enteral nutrition products, equipment and related supplies. The agency pays for:~~

~~(a) One purchased pump, per client, in a five-year period; ((and~~

~~(ii)) (b) One purchased nondisposable intravenous pole required for enteral nutrition product delivery, per client, per lifetime((:~~

~~(c) Providers must follow the department's expedited prior authorization process to receive payment.~~

~~(2) The department pays for up to twelve months of rental payments for tube-delivered enteral nutrition equipment. After twelve months of rental, the department considers the equipment purchased and it becomes the client's property.~~

~~(3) The department pays for replacement parts for tube-delivered enteral nutrition equipment, with prior authorization, when:~~

~~(a))); and~~

~~(c) No more than twelve months of equipment rental. After twelve months the agency considers the equipment purchased and it becomes the client's property.~~

(3) Women, infants, and children (WIC) program.

~~(a) If the client is age four or younger, the client must have a signed and dated written notification from the WIC program to receive tube delivered enteral nutrition products. The notice must verify:~~

~~(i) The client is not eligible for the WIC program; or~~

~~(ii) The client is eligible for the WIC program, but the client's need for a tube delivered enteral nutrition product exceeds WIC's allowed amount.~~

~~(b) If the client is age four or younger and is unable to receive a necessary tube delivered enteral nutrition product from WIC, the provider must keep the following information in the client's file:~~

~~(i) Documentation that the requested tube delivered product is not available through the WIC program; or~~

~~(ii) Reasons why a similar WIC product does not meet the client's needs.~~

(4) Authorization.

~~(a) If the client meets the criteria in subsection (1) of this section, the provider must follow the agency's expedited prior authorization (EPA) process to receive payment.~~

~~(b) If the client does not meet the criteria in subsection (1) of this section, the provider must submit a request for prior authorization (PA). The PA request must meet the requirements under WAC 182-554-700(3).~~

~~(c) The agency pays for enteral equipment replacement parts with PA if the equipment is:~~

~~(i) Owned by the client;~~

~~((b)) (ii) Less than five years old; and~~

~~((c)) (iii) No longer under warranty.~~

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

WAC 182-554-700 Enteral nutrition products, equipment and related supplies—Authorization.

~~((1) The department requires providers to obtain authorization for covered orally administered enteral nutrition products, and tube-delivered enteral equipment and related supplies as required in this chapter and in published department billing instructions and/or numbered memoranda or when the clinical criteria required in this chapter are not met.~~

~~(a) For prior authorization (PA), a provider must submit a written request to the department as specified in WAC 388-554-500(2).~~

~~(b) For expedited prior authorization (EPA), a provider must establish that the client's condition meets the clinically appropriate EPA criteria outlined in this chapter and in the department's published enteral nutrition billing instructions. The appropriate EPA number must be used when the provider bills the department.~~

~~(e) Upon request, a provider must provide documentation to the department showing how the client's condition met the criteria for PA or EPA.~~

~~(2) Authorization requirements in this chapter are not a denial of service for the client.~~

~~(3) When an oral enteral nutrition product or tube delivered enteral nutrition equipment or related supply requires authorization, the provider must properly request authorization in accordance with the department's rules, billing instructions, and numbered memoranda.~~

~~(4) When authorization is not properly requested, the department rejects and returns the request to the provider for further action. The department does not consider the rejection of the request to be a denial of service.~~

~~(5) The department's authorization does not necessarily guarantee payment.~~

~~(6) The department evaluates requests for authorization for covered enteral nutrition products, equipment, and related supplies that exceed limitations in this chapter on a case-by-case basis in accordance with WAC 388-501-0169.~~

~~(7) The department may recoup any payment made to a provider if the department later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC 388-502-0100 (1)(c).~~

~~(8)) (1) **General.**~~

~~(a) Providers must obtain authorization for all covered orally administered or tube-delivered enteral nutrition products, equipment and related supplies as required in this chapter, the agency's published billing instructions, and when the clinical criteria in this chapter are not met.~~

~~(b) Authorization does not guarantee payment.~~

~~(c) Authorization requirements are not a denial of service.~~

~~(d) The agency may reject an incomplete authorization request and return it to the provider for further action. A returned request is not a denial of service.~~

~~(e) If a request for authorization exceeds limitations in this chapter, the agency evaluates the request under WAC 182-501-0169.~~

~~(f) If the agency determines that a service was wrongfully authorized or did not meet the expedited prior authorization (EPA) criteria, the agency may recoup payment from the provider under chapters 182-502 and 182-502A WAC.~~

~~(g) Upon request, a provider must furnish documentation to the agency that shows how the client's condition met the criteria for prior authorization (PA) or EPA.~~

~~(2) **Prior authorization.** PA is required for:~~

~~(a) Orally administered enteral nutrition products under WAC 182-554-500; and~~

~~(b) Tube-delivered enteral equipment, replacement parts and related supplies under WAC 182-554-600(3).~~

~~(3) **Prior authorization request form.** The provider must submit a request for PA on the Oral Enteral Nutrition Worksheet Prior Authorization Request form. This form is available online at <http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx>. This form must be:~~

~~(a) Complete, with all fields full;~~

~~(b) Completed by the prescribing physician, advanced registered nurse practitioner, or physician assistant;~~

~~(c) Written, dated, and signed (including the prescriber's credentials) by the prescriber on the same day, and before the date of delivery. This form must not be backdated; and~~

~~(d) Submitted within three months of the date the prescriber signed the prescription.~~

~~(4) **Expedited prior authorization.** For EPA, a provider must establish that the client's condition meets the clinically appropriate EPA criteria outlined in this chapter and in the agency's published billing instructions. The provider must use the appropriate EPA number when billing the agency.~~

~~(5) If a fee-for-service client enrolls ((in a department-contracted MCO before the department completes)) with an agency-contracted managed care organization (MCO) before the purchase or rental of ((prescribed enteral nutrition products, necessary equipment and supplies:~~

~~(a) The department rescinds the authorization of the purchase or rental;~~

~~(b) The department)) authorized equipment is complete:~~

~~(a) The agency stops paying for ((any)) the equipment on the last day of the month ((preceding)) before the month in which the client ((becomes-enrolled)) enrolls in the managed care plan; and~~

~~((e) The department-contracted MCO determines the client's continuing need for the equipment and is then responsible for the client.~~

~~(9) The department rescinds any)) (b) The MCO may reevaluate the client's need for the equipment.~~

~~(6) The agency may rescind authorization for ((prescribed)) enteral equipment if ((the equipment was not delivered to the client before)) the client:~~

~~(a) ((Loses medical eligibility;)) Enrolls in, or becomes eligible for, an MCO;~~

~~(b) Becomes covered by a hospice agency and the equipment is used in the treatment of the terminal diagnosis or related condition(s);~~

~~(c) ((Becomes eligible for a department-contracted managed care plan;)) Loses eligibility; or~~

~~(d) Dies.~~

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

WAC 182-554-800 Noncovered—Enteral nutrition products, equipment, and related supplies. (1) The ((department)) medicaid agency does not cover the following:

~~(a) Nonmedical equipment, supplies, and related services((-including but not limited to, back-packs)) (for example, backpacks, pouches, bags, baskets, or other carrying containers); and~~

~~(b) Orally administered enteral nutrition products for any client((s)) age twenty-one ((years of age)) and older.~~

~~(2) A provider may request an exception to rule ((ETR), as described in WAC 388-501-0160, may be requested)) under WAC 182-501-0160 for a noncovered service.~~

~~(3) When early and periodic screening, diagnosis, and treatment (EPSDT) applies, the ((department)) agency evaluates a request for a noncovered service, equipment, or ((supply according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not~~

experimental (see WAC 388-534-0100)) related supplies under WAC 182-501-0165. See WAC 182-534-0100 for EPSDT rules((t)).

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

WAC 182-554-900 Reimbursement—Enteral nutrition products, equipment, and related supplies. (1) The ~~((department))~~ medicaid agency:

(a) Determines reimbursement for enteral nutrition products, equipment, and related-supplies according to a set fee schedule;

(b) Considers medicare's current fee schedule when determining maximum allowable fees;

(c) Considers vendor rate increases or decreases as directed by the legislature; ~~((and))~~

(d) Evaluates and updates the maximum allowable fees for enteral nutrition products, equipment, and related supplies at least once per year.

(2) The ~~((department's payment))~~ agency pays for covered enteral nutrition products, equipment and related supplies according to a set fee schedule. The agency's payment includes all of the following:

(a) Any adjustment~~((s))~~ or modification~~((s))~~ to the equipment ~~((required))~~ within three months of the date of delivery~~((—This does not apply to adjustments required because of changes))~~ as long as the adjustment is not caused by a change in the client's medical condition;

(b) Instructions to the client ~~((and/))~~ or caregiver on the safe and proper use of equipment provided;

(c) Full service warranty;

(d) Delivery and pick-up; and

(e) Fitting and adjustments.

(3) If changes in circumstance occur during the rental period, such as death or ineligibility, the ~~((department))~~ agency discontinues payment effective on the date of the change in circumstance.

(4) The ~~((department))~~ agency does not pay for simultaneous rental and ~~((a))~~ purchase of any item.

(5) The ~~((department))~~ agency does not reimburse ~~((providers))~~ for equipment ~~((that is supplied to them))~~ a provider receives at no cost ~~((through suppliers/manufacturers))~~.

(6) The provider who furnishes enteral nutrition equipment to a client is responsible for any costs incurred to have another provider repair equipment if all of the following apply:

(a) Any equipment that the ~~((department))~~ agency considers purchased requires repair during the applicable warranty period;

(b) The provider refuses or is unable to fulfill the warranty; and

(c) The client still needs the equipment.

(7) If the rental equipment must be replaced during the warranty period, the ~~((department))~~ agency recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the equipment delivered to the client if:

(a) The provider is unwilling or unable to fulfill the warranty; and

(b) The client still needs the equipment.

WSR 16-23-096

PROPOSED RULES

DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed November 16, 2016, 4:54 p.m.]

Supplemental Notice to WSR 16-15-058.

Preproposal statement of inquiry was filed as WSR 14-23-046.

Title of Rule and Other Identifying Information: Repealing chapter 246-872 WAC, Automated drug distribution devices; WAC 246-869-120 Mechanical devices in hospitals; and creating a new chapter 246-874 WAC, Pharmacy and technology. The new chapter will include several parts regarding different technologies; the first part will be automated drug dispensing devices (ADDD). This is a supplemental proposal to rules proposed as WSR 16-15-058 filed on July 18, 2016.

Hearing Location(s): SeaTac Red Lion Inn, 18220 International Boulevard, Seattle, WA 98188, on January 5, 2017, at 1:00 p.m.

Date of Intended Adoption: January 5, 2017.

Submit Written Comments to: Tracy West, Department of Health, Health Systems Quality Assurance (HSQA), P.O. Box 47852, Olympia, WA 98504, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2260, by December 21, 2016.

Assistance for Persons with Disabilities: Contact Tracy West by December 21, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rules incorporate concepts found in current WAC and practices used by the commission for approval of ADDD policies and procedures. The proposed rules build upon those concepts and add clarity. The supplemental proposal makes substantive changes to the original proposal by removing the definition relating to emergency medications in proposed WAC 246-874-040(3), repealing WAC 246-869-120, and making other nonsubstantive changes.

Reasons Supporting Proposal: The current rules, chapter 246-872 WAC, lack clear standards and require pharmacies and health care facilities to present ADDD policies and procedures before the full commission for approval prior to the placement of an ADDD in the pharmacy or facility. The proposed rules allows facilities to install ADDDs without commission prior approval. The supplemental proposal's substantive change of removing the definition for emergency medications will provide facilities with the flexibility to use this secure technology based on the services they provide.

Statutory Authority for Adoption: Chapter 18.64 RCW, RCW 18.64.005.

Statute Being Implemented: Chapter 18.64 RCW.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, 111 Israel Road, Tumwater, WA 98501, (360) 236-4988; Implementation and Enforcement: Steve Saxe, 111 Israel Road, Tumwater, WA 98501, (360) 236-4853.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Tracy West, Department of Health, Office of the Assistant Secretary, HSQA, P.O. Box 47863, Olympia, WA 988504-7863, phone (360) 236-4988, fax (360) 236-4626, e-mail tracy.west@doh.wa.gov.

November 16, 2016
Tim Lynch, PharmD, MS
Chair

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-869-120 Mechanical devices in hospitals.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-872-010 Purpose.

WAC 246-872-020 What definitions do I need to know to understand these rules?

WAC 246-872-030 What are the pharmacy's responsibilities?

WAC 246-872-040 What are the responsibilities of the facility in the use of automated drug distribution devices?

WAC 246-872-050 What are quality assurance and performance improvement requirements for the use of automated drug distribution devices?

Chapter 246-874 WAC

PHARMACY AND TECHNOLOGY

NEW SECTION

WAC 246-874-010 Definitions. The following definitions apply to this chapter, unless the context clearly indicates otherwise:

(1) "ADDD" or "automated drug dispensing device" includes, but is not limited to, a mechanical system controlled remotely by a pharmacist that performs operations or activities, related to the storage, counting, and dispensing of drugs to a credentialed health care professional consistent with their scope of practice. "ADDD" does not include technology that solely counts or stores, kiosks, robots, emergency kits, supplemental dose kits, or automation for compounding, administration, or packaging.

(2) "Blind count" means a physical inventory on the ADDD taken by a pharmacist or other credentialed health care professional acting within their scope of practice, as determined by the responsible manager who performs a physical inventory without knowledge of or access to the quantities currently shown on electronic or other inventory systems.

(3) "Commission" means the Washington state pharmacy quality assurance commission.

(4) "Controlled substances" has the same meaning as defined in RCW 69.50.101.

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

(6) "Dispense" or "dispensing" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, labeling, or packaging necessary to prepare that prescription or order for delivery. For purposes of part 1, dispensing by an ADDD does not include compounding.

(7) "Electronic verification system" means an electronic verification, bar code verification, radio frequency identification (RFID), weight verification, or similar electronic process that accurately verifies that medications have been properly dispensed, labeled by or loaded into an ADDD.

(8) "Legend drugs" has the same meaning as defined in RCW 69.41.010.

(9) "Override" means the process by which credentialed health care professionals, acting within their scopes of practice, are permitted to access and remove from an ADDD certain legend drugs, including controlled substances, prior to prospective drug utilization review and approval by a pharmacist.

(10) "Override list" means a list of medications, tailored to the health care facility based on the nature of care delivered, which are subject to retrieval without prospective drug utilization review.

(11) "Part 1" means WAC 246-874-020 through 246-874-070.

(12) "Pharmacist" has the same meaning as defined in RCW 18.64.011.

(13) "Pharmacy technician" has the same meaning as defined in RCW 18.64A.010.

(14) "Prospective drug utilization review" means the evaluation and approval of medication orders prior to administration of the first dose by a pharmacist.

(15) "Replenishment" includes checking stock, loading, unloading, filling and refilling of medications in the ADDD.

(16) "Responsible manager" has the same meaning as WAC 246-869-070, and is synonymous with WAC 246-865-060, 246-873-040, and 246-904-030.

(17) "Secure area" means that drugs are stored in a manner to prevent unmonitored access by unauthorized individuals.

(18) "Supervision" means overseen directly by a pharmacist who is on the premises or indirectly by an electronic verification system for managing of ADDD inventory.

PART 1

AUTOMATED DRUG DISPENSING DEVICES

NEW SECTION

WAC 246-874-020 General applicability. (1) Part 1 sets the requirements for an ADDD managed by licensed pharmacies under chapter 18.64 RCW, health care entities as defined in RCW 18.64.011, health care facilities as defined in RCW 70.38.025, assisted living facilities as defined in RCW 18.20.020, nursing homes as defined in RCW 18.51.010, health maintenance organizations as defined in RCW 70.38.025, and public health centers as defined in RCW 70.40.020, and any other entity authorized by the commission, that choose to use them.

(2) Use of an ADDD that conforms to the requirements in part 1 does not require approval by the commission. Pharmacies, including nonresident pharmacies shall provide written notice on a form provided by the department of the physical address of the facilities where ADDDs they manage or serve are located.

(3) Previously approved facilities using ADDDs shall have one year from the effective date of (date will be added by the code reviser office) to comply with part 1.

(4) Nothing in part 1 is applicable to technology that solely counts or stores, kiosks, robots, emergency kits, supplemental dose kits, or automation for compounding, administration, or packaging.

NEW SECTION

WAC 246-874-025 Responsible manager designation requirement for an ADDD. Each pharmacy and facility using an ADDD shall designate a responsible manager, a pharmacist who is licensed in Washington state. The responsible manager is responsible for oversight of the ADDDs, and to assure that drugs are procured, stored, delivered, and dispensed in compliance with all applicable state and federal statutes and regulations.

NEW SECTION

WAC 246-874-030 General requirements for an ADDD. (1) The pharmacy and any facility using an ADDD shall have written policies and procedures in place prior to any use of an ADDD. The responsible manager shall review the written policies and procedures at least annually and make necessary revisions. The pharmacy or facility must document the required annual review and make available upon request by the commission or its designee. Electronic documents made available on a computer at the facility or pharmacy are permissible.

(2) The pharmacy or facility must maintain a current copy of all policies and procedures related to the use of the ADDD and make them available within the pharmacy or facility where the ADDD is located and available upon request to the commission or its designee. Electronic documents made available on a computer at the facility or pharmacy are permissible.

(3) The policies and procedures must include, but are not limited to:

(a) All sections of part 1;

(b) User privileges based upon user type;

(c) Criteria for selection of medications subject to override and an override list approved by the pharmacy or facility's pharmacy and therapeutics committee or equivalent committee;

(d) Diversion prevention procedures; and

(e) Record retention and retrieval requirements that adhere to all state and federal laws and regulations. Records must be retained for a minimum of two years.

(4) An ADDD shall collect, and maintain all transaction information including, but not limited to, the identity of the individuals accessing the system and identity of all personnel loading the ADDD, to accurately track the movement of drugs into and out of the system for security, accuracy, and accountability. The pharmacy or facility must maintain and make readily available on request all records of transaction to the commission or its designee. Electronic documents made available on a computer at the facility or pharmacy are permissible.

(5) Inventory control.

(a) Authorized personnel must place drugs into the ADDD in the manufacturer's original, sealed unit dose or unit-of-use packaging, in repackaged unit-dose containers or in other suitable containers to support patient care and safety and are in accordance with federal and state laws and regulations;

(b) When applicable, patient owned medications that have been properly identified, and have been approved for use per the facility's policies, may be stored in accordance with policies for safe and secure handling of medication practices.

(6) The responsible manager may designate a Washington state credentialed health care professional acting within their scope of practices as a designee to perform tasks in part 1. The responsible manager shall retain all professional and personal responsibility for any assisted tasks performed by personnel under his or her responsibility, as shall the pharmacy employing such personnel.

NEW SECTION

WAC 246-874-040 Security and safety requirements for ADDD. (1) The responsible manager shall ensure adequate security systems and procedures for the ADDD, addressing access, including:

(a) A system by which secure access of users is obtained by such methods as biometrics or some other secure technology; and

(b) Prevention of unauthorized access or use, including:

(i) System access for former employees, or individuals whose access or privileges have been changed or terminated, must be removed immediately or inactivated upon notification; and

(ii) Discharged patients shall have patient profiles removed from the ADDD as soon as possible but no later than twelve hours from notification of the discharge.

(2) The responsible manager or designee shall assign, discontinue, or change user access and types of drug privileges to the ADDD. Access to the ADDD must be limited to those Washington state credentialed health care practitioners acting within their scope of practice. Access to the ADDD by facility information technology employees or employees of similar title must be properly restricted and addressed in policies and procedures.

(a) Replenishment of medications in an ADDD is reserved to a pharmacist, pharmacy intern, or a pharmacy technician under the supervision of a pharmacist, or a Washington state licensed registered nurse or licensed practical nurse may replenish an ADDD using an electronic verification system, that ensures exact placement of secured compartments into the ADDD;

(b) Pharmacists must provide an independent double check of all medications to be distributed to an ADDD in the absence of an approved specialized function or electronic verification system used in stocking an ADDD. A pharmacy technician that meets the criteria for specialized functions in WAC 246-901-035(1) may also provide the independent double check in place of a pharmacist. Electronic verification system checking or other approved technology may be used in place of an independent manual double check.

(3) A pharmacist shall perform prospective drug utilization review and approve each medication order, except if:

(a) The drug is a subsequent dose from a previously reviewed drug order;

(b) The prescriber is in the immediate vicinity and controls the drug dispensing process;

(c) The system is being used to provide access to medications on override and only a quantity sufficient to meet the immediate need of the patient is removed; or

(d) When twenty-four hour pharmacy services are not available.

(4) When twenty-four hour pharmacy services are not available, a pharmacist shall perform retrospective drug utilization review within six hours of the pharmacy being open, except when a dispensed override medication is a one-time dose or order for discharged patients.

(5) The pharmacist shall reconcile and review all medication orders added to a patient's profile outside of the facility's normal admission discharge transfer process and procedures, no later than the next business day.

(6) Medication or devices may only be returned directly to the ADDD for reissue or reuse consistent with policy and procedures for safe and secure medication processes, which include, but are not limited to:

(a) Medications or devices, excluding controlled substances, stored in patient specific bins, matrices, or open pockets, such as home medications or multiple use patient specific bottles may be returned to an ADDD so long as adequate controls are in place to ensure proper return.

(b) Medications stored in patient specific containers may not be returned to general stock for reuse.

(7) The responsible manager shall ensure a method is in place to address breach of security of the ADDD including, but not limited to:

(a) Tracking of malfunction and failure of the ADDD to operate correctly; and

(b) Downtime procedures in the event of a disaster or power outage that interrupts the ability of the pharmacy to provide services.

(8) An ADDD used in an assisted living facility must be located in a secure area, with both the area where the ADDD is located and the ADDD locked when not in use.

NEW SECTION

WAC 246-874-050 Accountability requirements for an ADDD. (1) The facility shall have a mechanism for securing and accounting for wasted, discarded, expired, or unused medication removal from the ADDD according to policies and procedures, and existing state and federal laws and regulations.

(2) The responsible manager shall implement procedures and maintain adequate records regarding use and accountability of legend drugs, including controlled substances, in compliance with state and federal laws and regulations including, but not limited to:

(a) A system to verify the accuracy of controlled substance counts shall include:

(i) Controlled substances must be perpetually inventoried with a blind count by a pharmacist or other Washington state credentialed health care professional acting within their scope of practice, as determined by the responsible manager each time they are accessed in an ADDD; except for controlled substances dispensed in dose specific amounts by an ADDD to a Washington state credentialed health care professional acting within their scope of practice without access to the remaining controlled substance inventory; or

(ii) All controlled substances that are accessed for replenishment in an ADDD shall have an inventory count performed at that time. When replenishment or removal has not occurred, an inventory count shall occur at a minimum, once every seven days by two authorized persons licensed to handle drugs.

(b) Controlled substances must be stored in individually secured pockets or compartments within the ADDD. Storage in "matrix" drawers or open pocket drawers is prohibited.

(c) Facilities using a closed canister system must have a system to verify the accuracy of controlled substance counts by perpetual inventory that is regularly reviewed and reconciled by pharmacy staff.

(d) Controlled substance discrepancy monitoring and resolution, which includes:

(i) The responsible manager shall work with the facility or nursing administration to maintain an ongoing medication discrepancy resolution and medication monitoring process; and

(ii) A discrepancy report must be generated for each transaction where the count of a drug on hand in the device, does not reflect actual inventory. All resolved and open discrepancies must be reviewed by the responsible manager or designee within seven calendar days; and

(iii) Comply with all state and federal Drug Enforcement Administration reporting requirements.

(3) Wasted controlled substances. All controlled substances wasted shall have a witness, who is a Washington state credentialed health care professional; the record of

waste shall be authenticated by both persons. A waste record must be readily retrievable in the ADDD, electronic health record, or as a hard copy report in accordance with the facility's policies and procedures. The report of waste shall include patient name, drug name, drug strength, date and time of waste, the amount wasted, and the identity of the person wasting and the witness. Waste records must be maintained for a minimum of two years.

NEW SECTION

WAC 246-874-060 Quality assurance process requirements for ADDD. Each pharmacy and facility shall establish and maintain a quality assurance and performance program that monitors performance of the ADDD, which is evidenced by written policies and procedures that are made readily available on request to the commission or its designee. Electronic documents made available on a computer at the facility or pharmacy are permissible. The responsible manager shall perform annual audits of compliance with all ADDD policies and procedures. The quality assurance program shall include, but is not limited to:

- (1) Method for ensuring accurate replenishment of the ADDD;
- (2) Procedures for conducting quality control checks for drug removal for accuracy;
- (3) Method for reviewing override data and medication error data associated with ADDD and identifying opportunities for improvement.

NEW SECTION

WAC 246-874-070 Nursing students ADDD access. If a facility provides a clinical opportunity for nursing students enrolled in a Washington state nursing commission approved nursing program, a nursing student may access the ADDD only under the following conditions:

- (1) Nursing programs shall provide students with orientation and practice experiences that include demonstration of competency of skills prior to using an ADDD;
- (2) Nursing programs, health care facilities, and pharmacies shall provide adequate training for students accessing ADDD; and
- (3) The nursing commission approved nursing programs, health care facilities, and pharmacies shall have policies and procedures for nursing students to provide medication administration safely, including:
 - (a) Access and administration of medications by nursing students based on student competencies;
 - (b) Orientation of students and faculty to policies and procedures related to medication administration and distribution systems; and
 - (c) Reporting of student medication errors, near misses and alleged diversion.

WSR 16-23-105
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed November 17, 2016, 3:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-17-149.

Title of Rule and Other Identifying Information: New WAC 314-55-073 Marijuana research license.

Hearing Location(s): Washington State Liquor and Cannabis Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on December 28, 2016, at 10:00 a.m.

Date of Intended Adoption: On or after January 11, 2017.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504, e-mail rules@lcb.wa.gov, fax (360) 664-9689, by December 28, 2016.

Assistance for Persons with Disabilities: Contact Joanna Eide by December 21, 2016, (360) 664-1622.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement the application process, review process, and requirements for the marijuana research license as established in RCW 69.50.372.

Reasons Supporting Proposal: Rule changes are needed to implement the marijuana research license established by RCW 69.50.372. Changes to RCW 69.50.372 were passed by the legislature during the 2016 legislative session making it possible for WSLCB to proceed with implementing the new license. RCW 69.50.372 gives WSLCB authority to adopt rules related to the implementation of the marijuana research license in RCW 69.50.372(5), including application requirements and administrative provisions relating to the license. These rules are needed to fully implement and issue the license.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, and 69.50.372.

Statute Being Implemented: RCW 69.50.342, 69.50.345, and 69.50.372.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1622; Implementation: Rebecca Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule: WAC 314-55-073 Marijuana research license, is a proposed new WAC section that details application requirements and

other requirements for marijuana research license holders. It contains several reporting and other compliance requirements, which apply to all applicants and licensees. The rule also details requirements for WSLCB's scientific reviewer regarding review of applications, research projects, and ongoing review and reporting.

- a. The following requirements apply to all applicants:
 - i. Detailed application requirements including demonstrating the scientific basis for research proposals;
 - ii. Facility requirements, including security requirements;
 - iii. Criminal background checks; and
 - iv. Financial investigations.
- b. The following requirements apply to all holders of a research license:
 - i. Security requirements similar to those requirements for other marijuana licensees to ensure marijuana is not diverted to the illegal market;
 - ii. Prohibition of comingling of marijuana on site held for purposes other than research;
 - iii. Tracking of marijuana obtained and possessed for research purposes through the state's traceability system;
 - iv. Review and approval of any additional research projects under the license prior to obtaining marijuana and conducting research for those projects;
 - v. Project status reporting applying to both license holders and WSLCB's scientific reviewer.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: There are no mandatory professional services applicants or licensees will need in order to comply with the requirements. Applicants or licensees may choose to obtain professional services, but this will be voluntary in nature and may depend on the type of research the applicant or licensee intends to conduct.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs: Since this is a new license and a voluntary license, there are no costs that will apply across the board to businesses WSLCB regulates or small businesses unless and until they choose to apply for a research license. Costs for equipment, supplies, labor and administrative costs will depend on the type of research and specific research project the applicant or licensee intends to conduct. Once licensed, research licensees will have access to the state's traceability system at no cost.

4. Will Compliance with the Rules Cause Businesses to Lose Sales or Revenue? Rule requirements should not cause loss of sales or revenue. The research license is intended to generate scientific research and data regarding cannabis, but may also be used for commercial purposes. WSLCB anticipates that laboratories that already conduct other types of research will apply for the research license, so adjustments for marijuana research should be minimal in those cases and should not result in loss of sales or revenue.

5. Costs of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

- a. Cost per employee;
- b. Cost per hour of labor; or
- c. Cost per one hundred dollars of sales.

Businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including license type if an applicant is a licensed marijuana business. The costs for compliance will vary significantly depending on the applicant, category of research proposed (see RCW 69.50.372), and complexity of the research project. For these reasons, and because it is unclear as to how many persons or entities will apply for the license and the size of any businesses that choose to apply, costs for compliance are indeterminate.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: WSLCB sought to reduce costs on licensees through making the application process electronic in nature and by clearly delineating application and ongoing requirements in the proposed rule. WSLCB will work with the scientific reviewer regarding costs for review once a scientific reviewer is selected as applicants and licensees will be responsible for paying costs of review directly to the scientific reviewer as required by RCW 69.50.372. Review costs will be varied depending on the types of projects that are proposed. Each research project will be different in subject, scope, and detail. Costs incurred for review will depend on the number of projects proposed and the complexity of the research project proposal. WSLCB will provide access to the state's traceability system at no cost to research licensees.

Because marijuana research licensees will be dealing with a Schedule I listed substance on both a state and federal level, and WSLCB is tasked with ensuring the security of marijuana and preventing diversion into the illegal market, a high level of regulatory restriction, oversight, and reporting is appropriate. WSLCB sought to reduce costs where possible, but has to balance cost reductions against security and traceability considerations, as well as ensure requirements are in place to ensure that licenses are appropriately granted (financial investigations and background checks). For these and other public safety reasons, the costs of compliance with rule requirements are justified.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: Stakeholders are invited to provide feedback to the rules during the rule-making process.

8. A List of Industries That Will Be Required to Comply with the Rule: All applicants for a marijuana research license and marijuana research license holders will be required to comply with these rules. Applicants could range from a multitude of industries, including from the scientific, educational, agricultural, or commercial industries. Licensed marijuana businesses who choose to apply for a license will also be required to comply with the rule requirements. All persons or entities that receive a research license will have to meet ongoing conditions of licensure and reporting requirements.

WSLCB's scientific reviewer will also have to comply [with] review and reporting requirements as part of administering the marijuana research license program. WSLCB is

currently in the process of soliciting applications for a scientific reviewer.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: Indeterminate. It is unknown how many persons or entities will apply for a research license at this time and what types or sizes of businesses, organizations, or other entities with employees will apply for a license.

A copy of the statement may be obtained by contacting Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, phone (360) 664-1622, fax (360) 664-9689, e-mail Joanna.Eide@lcb.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required under RCW 34.05.328 because the proposed new rule does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05328 [34.05.328](5).

November 17, 2016

Jane Rushford
Chair

NEW SECTION

WAC 314-55-073 Marijuana research license. A marijuana research license allows a holder of the license to produce, process, and possess marijuana for the limited research purposes provided in RCW 69.50.372. The WSLCB designates a scientific reviewer (reviewer) to review research applications and make recommendations for the approval or denial of research projects and to assess licensed research activities. The following provisions are in addition to the requirements for marijuana research licensees provided in RCW 69.50.372.

(1) Eligibility and continuing requirements for research license applications, prohibitions and restrictions.

(a) Other than the restrictions listed in this subsection, any person, organization, agency, or business entity may apply for a marijuana research license.

(b) Other marijuana licensees may apply for a research license. Facilities at which the research is conducted must be wholly separate and distinct from the marijuana business, except:

(i) Licensed producers with a research license and approved research project may grow marijuana plants or possess marijuana for research purposes at the producer's licensed premises. However, all marijuana grown or possessed for research purposes or purposes other than those related to the research project must be kept wholly separated and distinct from commercial operations and must not be comingled with or diverted to marijuana grown for commercial purposes or purposes other than those related to the research project; and

(ii) Licensed processors with a research license and approved research project may possess marijuana for research purposes at the processors licensed premises. However, all marijuana possessed for research purposes must be kept wholly separated and distinct from all marijuana possessed for commercial purposes or purposes other than those

related to the research project and must not be comingled with or diverted to marijuana possessed for commercial purposes or purposes other than those related to the research project. Licensed processors who do not also hold a producer license may not grow marijuana plants for the purposes of research under a research license at the processor's licensed location.

(c) Labs certified to perform quality assurance testing on marijuana and marijuana products by the WSLCB may apply for a research license. Certified labs with a research license and approved research project must ensure that all marijuana possessed for research purposes is wholly separated from and is not comingled with marijuana possessed for state required testing purposes for licensed producers or processors or marijuana possessed for any reason other than research purposes.

(d) All research license applicants and persons conducting research under the research license must be twenty-one years of age or older.

(e) All research license applicants and those persons that have managing control over an organization, agency, or business entity must pass a criminal background check and financial investigation prior to being eligible to receive a research license.

(f) No applicant for a research license may possess any marijuana plants or marijuana unless and until the research project is approved and the applicant is notified that the research license is approved in writing by the WSLCB.

(g) No research licensee may conduct research unless and until the research project is approved by the reviewer and the WSLCB in writing.

(2) Initial applications.

(a) Application made with business licensing services (BLS).

(i) Applicants for a research license must apply through BLS to begin the application process for a research license.

(ii) Upon submitting an application for a research license through BLS, the applicant will receive an application letter from the WSLCB directing the applicant to submit the additional application materials directly to the WSLCB's designated scientific reviewer (reviewer).

(A) The applicant must submit complete and accurate additional application materials directly to the reviewer within thirty days of the date of the application letter from the WSLCB or by the date indicated on the application letter. It is the responsibility of the research license applicant to comply with the application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the reviewer.

(B) Incomplete or incorrect additional application materials, materials that do not adhere to the content requirements in this section, or materials not received by the reviewer by 5:00 p.m. on the 30th day or the application date as indicated on the letter from the WSLCB will not be considered by the reviewer and the WSLCB will withdraw the application after receiving notice in writing from the reviewer.

(b) Additional application materials requirements.

(i) Application materials that do not adhere to the content requirements in this section or incomplete or incorrect applications will be withdrawn.

(ii) The applicant is responsible for ensuring that no information is included in the research plan that may compromise the applicant's ability to secure patent, trade secret, or other intellectual property protection. All application documents must be submitted by a person who has the legal authority to represent the entity if the applicant is an entity other than an individual person.

(iii) All documents must be submitted to the reviewer in a legible PDF format.

(iv) All of the following information and documents are required for each initial application:

(A) A completed cover page form, marijuana research license application form, and signature page form created by the WSLCB and available at the WSLCB's web site at www.lcb.wa.gov.

(B) A research plan limited to four pages that includes the following information:

(I) Purpose and goal(s) of the proposed research project(s);

(II) Key milestones and timelines for the research project(s);

(III) Background and preliminary studies;

(IV) Amount of marijuana to be grown, if applicable, including the justification with respect to milestone tasks;

(V) Anticipated cost of the proposed research project(s) and funding available for the work;

(VI) Key personnel and organizations, including names and roles;

(VII) Facilities, equipment, and other resources required and available for conducting the proposed research project(s).

(C) A biosketch for each individual involved in executing the proposed research project limited to two pages per individual performing technical and administrative functions essential to performing the proposed research, including proof that the individual is twenty-one years of age or older. Biosketches must be prepared using the National Institutes of Health (NIH) biographical sketch format, available at <http://grants.nih.gov/grants/forms/new-renewal-revisions.htm>.

(D) Letters of support limited to two pages per letter confirming the commitment of time and resources from external personnel or organizations if external personnel or organizations will participate in research activities under an approved research project. Letters of support are required to confirm the commitment of time and resources from personnel involved in the proposed research project(s) who are not employed at the applicant organization. Letters of support must include specific details regarding the type(s) and magnitude of the time and resources being committed to the proposed research project(s) and must be signed by individuals having the authority to make such commitments.

(E) For all project(s) involving human or animal subjects, documentation of all required institutional review board (IRB) or institutional animal care and use committee (IACUC) approvals. Documents must be provided on IRB or IACUC letterhead and be signed by authorized officials of those regulatory bodies.

(v) Documents that do not conform to the requirements in subsection (b) of this section may be withdrawn. All non-

form documents must conform to the following requirements:

(A) Eight and one-half by 11-inch portrait-oriented page dimensions;

(B) Single-spaced with all margins measuring at least one inch; and

(C) At least 12-point font in Times New Roman or Arial, not proportionately reduced.

(c) **Review by the WSLCB's designated scientific reviewer.**

(i) If the applicant submits application materials to the reviewer by the required deadline specified by the WSLCB's application letter and the reviewer determines the additional application materials are complete and meet the document requirements specified in this section, the reviewer will proceed with reviewing the research project to evaluate whether the project complies with the provisions of RCW 69.50.372 (1) and (2).

(ii) When evaluating research projects, the reviewer must:

(A) Ensure confidentiality; and

(B) Screen members of the reviewer panel for any conflicts of interest and take appropriate measures if a conflict of interest is identified.

(iii) The reviewer will assess fees for the review of the research project proposal directly to the applicant pursuant to RCW 69.50.372(7). The reviewer will not recommend approval of an application for any research license for which an unpaid balance of fees to the reviewer is due regardless of the recommendation of the reviewer regarding the sufficiency of the research project.

(iv) If at any time during the process of review the reviewer finds that the additional application materials are not complete, the reviewer will notify the WSLCB in writing and the WSLCB will withdraw the application.

(v) The reviewer will supply a written evaluation to the WSLCB in writing after completing review of the research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation. The WSLCB will provide written evaluations to applicants following completion of the review process by the reviewer along with the WSLCB's approval or denial of the research license.

(d) **WSLCB requirements and licensing process.** If the reviewer indicates the application for a research license should be approved, the following requirements must be met prior to final approval of the license by the WSLCB.

(i) The WSLCB will request criminal background and financial information from the research license applicant and evaluate the applicant(s) pursuant to the standards and requirements established in WAC 314-55-020;

(ii) The applicant(s) must adhere to the notice posting requirements under WAC 314-55-020;

(iii) The applicant must demonstrate access to and proficiency with the traceability system; and

(iv) The applicant must meet facility security requirements as provided in WAC 314-55-083 prior to being granted a license.

(3) Research license withdrawal and denials.

(a) The WSLCB will withdraw an application if:

(i) The application or additional application materials are determined incomplete or incorrect by the WSLCB or its designated reviewer;

(ii) The additional application materials are not timely received by the reviewer as provided in this section; or

(iii) The applicant(s) request withdrawal of a research license application at any time in the application process. The applicant must request the withdrawal in writing and is responsible for any review costs due to the reviewer. The voluntary withdrawal of a research license application does not result in a hearing right.

(b) The WSLCB will deny a research license if:

(i) The scientific reviewer does not recommend approval of the license after reviewing the research proposal for compliance with this section or RCW 69.50.372;

(ii) The applicant does not meet the requirements for a license under this section or RCW 69.50.372; or

(iii) The applicant provides false or misleading information in any of the materials it submits to the WSLCB or the reviewer.

(c) If the WSLCB denies a research application for the reasons provided in (b)(iii) of this subsection or for failing to meet criminal history or administrative violations requirements under this section, the applicant(s) is prohibited from reapplying for a research license for one calendar year from the date of the WSLCB's denial of the license.

(d) A person or entity that has outstanding unpaid review fees owing to the scientific reviewer is prohibited from reapplying for a research license until all review fees are paid to the scientific reviewer.

(4) Reporting required.

(a) The WSLCB or the WSLCB's designated reviewer may require reporting by or auditing of research licensees as necessary.

(b) The WSLCB's designated reviewer must submit an annual status report of all completed and ongoing research projects for the previous year to the WSLCB by December 31st of each calendar year.

(c) The licensee must adhere to the reporting requirements in the traceability system under WAC 314-55-083.

(d) The reviewer must immediately notify the WSLCB if it receives information indicating that a research licensee is operating outside the scope of the projects approved under a research license.

(5) Adding an additional research project or changing existing approved research project process (after licensure).

(a) A research licensee is restricted to only those research activities under a research project that has been reviewed and approved by reviewer.

(b) Applications to add a new project or change an existing approved project is the same as what is required for initial application except that a new license application through BLS is not required. To apply to add a new research project or change an existing approved project, a research licensee must submit all materials to the reviewer as required under subsection (2)(b) of this section. Incomplete project applications will not be considered.

(c) The reviewer will review the application for a new research project or change to an existing approved research project pursuant to subsection (2)(c) of this section. The reviewer will supply a written evaluation to the WSLCB and the licensee in writing after completing review of the application for a new research project or a change to an existing approved research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation.

(6) Research license renewals.

(a) Research license renewals operate on an annual basis, based on the license issuance date. A licensee must have an ongoing approved research project or an application for a new research project to be eligible for license renewal. The WSLCB will notify the licensee and reviewer ninety days prior to the license renewal date. The licensee must provide a status report to the reviewer or an application for a new research project if the licensee's ongoing approved research project will end within thirty days prior to or after the renewal date. The status report or application must be received by the reviewer within thirty days of the ninety-day renewal notice from the WSLCB or the license will not be renewed.

(b) The reviewer will notify the WSLCB in writing if the licensee meets the requirements for renewal not later than fifteen days prior to the licensee's renewal date.

(c) If the reviewer determines that the research project does not meet requirements for renewal due to lack of an ongoing project or for failure to meet the requirements of RCW 69.50.372 or this section for a proposed new project, the reviewer will recommend the WSLCB not renew the license.

(d) The WSLCB will review the licensee's violation history and criminal background check prior to renewal. If the violation history or criminal records disqualifies the licensee from eligibility for a research license under WAC 314-55-050, the WSLCB will not renew the license.

(7) License revocation.

(a) The WSLCB may revoke an application for the following reasons:

(i) The WSLCB has reason to believe that marijuana is being diverted from the research licensee;

(ii) The research licensee operates outside the scope of the research project(s) approved under the license issued to the licensee;

(iii) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the WSLCB during the application process or any subsequent investigation after a license has been issued;

(iv) The WSLCB finds that the licensee possesses marijuana plants, marijuana, or marijuana products that are not accounted for in the traceability system;

(v) The research licensee makes changes to their operating plan, entity structure, or location without prior approval from the WSLCB;

(vi) The research licensee fails to maintain security requirements for the licensed research facility; or

(vii) The licensee violates any provision of chapter 69.50 RCW or this chapter.

(b) A licensee may request voluntary cancellation of a license at any time. The licensee must request cancellation of a research license to the WSLCB in writing. The voluntary cancellation of a research license does not result in a hearing right.

(8) Marijuana disposal requirements.

(a) Licensees must dispose of marijuana as provided in WAC 314-55-097.

(b) Licensees must dispose of marijuana if the research license is discontinued for any reason. A licensee may transfer plants to another marijuana research licensee. A licensee may work with the WSLCB to dispose of marijuana or marijuana plants.

(9) An applicant or licensee may request an administrative hearing to contest the withdrawal, denial, nonrenewal, or revocation of a research license pursuant to chapter 34.05 RCW. A request for a hearing must be made in writing and received by the WSLCB no later than twenty days after the date the notification of withdrawal, denial, nonrenewal, or revocation was mailed to the applicant or licensee. Appeal requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 3000 Pacific Avenue S.E., Olympia, WA 98501, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98501.

WSR 16-23-123

PROPOSED RULES

**SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed November 21, 2016, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-20-088.

Title of Rule and Other Identifying Information: WAC 392-121-249 and 392-121-280, Finance—General apportionment—Certificated instructional staff.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 Washington Street S.E., Olympia, WA 98501, on January 4, 2017, at 10:00 a.m.

Date of Intended Adoption: January 6, 2017.

Submit Written Comments to: Ross Bunda, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail ross.bunda@k12.wa.us, fax (360) 664-3638, by January 4, 2017.

Assistance for Persons with Disabilities: Contact Kristin Murphy by December 28, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule revisions expand the definition of "accredited institution of higher education" to include institutions of higher education accredited by all national or regional accrediting associations approved by the Washington student achievement council

and the secretary of the United States Department of Education, as codified in the recently revised professional educator standards board WAC 181-78A-010.

Statutory Authority for Adoption: RCW 28A.150.290(1) and 28A.415.024.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting: Ross Bunda, OSPI, (360) 725-6308; Implementation and Enforcement: T. J. Kelly, OSPI, (360) 725-6301.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable, no small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

November 18, 2016 [2017]

Randy Dorn

State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 11-21-065, filed 10/17/11, effective 11/17/11)

WAC 392-121-249 Definition—Accredited institution of higher education. As used in this chapter, "accredited institution of higher education" means ~~((a community college, college, or university which is accredited, or is a candidate for accreditation, by one of the regional accrediting associations, pursuant to WAC 181-78A-010(6), or by the distance education and training council,))~~ an institution of higher education that has been accredited by a national or regional accrediting association recognized by the Washington student achievement council and the secretary of the U.S. Department of Education pursuant to WAC 181-78A-010(7).

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-280 Placement on LEAP salary allocation documents—Documentation required. School districts and charter schools shall have documentation on file and available for review which substantiates each certificated instructional employee's placement on LEAP salary allocation documents. The minimum requirements are as follows:

(1) Districts and charter schools shall document the date of awarding or conferring of the highest degree including the date upon which the degree was awarded or conferred as recorded on the diploma or transcript from the registrar of the accredited institution of higher education.

(a) If the highest degree is a master's degree, the district or charter school shall also document the date of awarding or conferring of the first bachelor's degree.

(b) If the degree was awarded by an institution which does not confer degrees after each term, and all degree requirements were completed at a time other than the date recorded on the diploma or transcript, a written statement

from the registrar of the institution verifying a prior completion date shall be adequate documentation.

(c) If the degree program was completed in a country other than the United States, documentation must include documentation in English of degree equivalency for the appropriate degree as allowed by WAC 181-79A-260: Provided, That documentation of degree equivalency is not required if that institution of higher education is already ((regionally)) accredited ((or accredited by the distance education and training council,)) pursuant to WAC 181-78A-010(7).

(2) Districts and charter schools shall document academic credits by having on file a transcript from the registrar of the accredited institution of higher education granting the credits. For purposes of this subsection:

(a) An academic credit is deemed "earned" at the end of the term for which it appears on the transcript: Provided, That a written statement from the registrar of the institution verifying a prior earned date may establish the date a credit was earned;

(b) Washington state community college credits numbered one hundred and above are deemed transferable for purposes of WAC 392-121-255(4) subject to the limitations of that same subsection;

(c) Credits are not deemed "earned" at an institution of higher education which transfers-in credits. Such credits must be documented using a transcript from the initial granting institution and are subject to all the limitations of WAC 392-121-255;

(d) If the credits were completed in a country other than the United States, documentation must include a written statement of credit equivalency for the appropriate credits from a foreign credentials' evaluation agency approved by the office of superintendent of public instruction: Provided, That documentation of degree equivalency is not required if that institution of higher education is already ((regionally)) accredited ((or accredited by the distance education and training council,)) pursuant to WAC 181-78A-010(7); and

(e) For credits earned after September 1, 1995, districts and charter schools shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district or charter school representative and must be available to the employee's future employers.

(3) Districts and charter schools shall document in-service credits:

(a) By having on file a document meeting standards established in WAC 181-85-107; and

(b) For credits earned after September 1, 1995, districts and charter schools shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district or charter school representative and must be available to the employee's future employers.

(4) Districts and charter schools shall document nondegree credits.

(a) For vocational/career and technical education educator training credits pursuant to WAC 392-121-259(3) districts

and charter schools shall have on file a document meeting standards established in WAC 181-85-107 and evidence that the training was authorized pursuant to WAC 181-77-003 (2), (9), or (12).

(b) For credits calculated from converted occupational experience pursuant to WAC 392-121-259(3) districts and charter schools shall have on file documents which provide:

(i) Evidence that the occupational experience meets the requirements of WAC 181-77-003(7);

(ii) Evidence of the individual's actual number of hours of employment for each year including dates of employment; and

(iii) The district or charter school calculation of converted credits pursuant to WAC 392-121-259(3).

(c) For credits earned after September 1, 1995, districts shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district representative and must be available to the employee's future employers.

(5) Districts and charter schools shall document certificated years of experience as follows:

(a) For certificated years of experience obtained and reported on Report S-275 prior to the 1994-95 school year districts and charter schools shall have on file documents that provide evidence of employment including dates of employment.

(b) For certificated years of experience reported on Report S-275 for the first time after the 1993-94 school year districts and charter schools shall have on file:

(i) The total number of hours, or other unit of measure, per year for an employee working full-time with each employer;

(ii) The number of hours, or other unit of measure (worked by the employee), per year and dates of employment with each employer, including paid leave and excluding unpaid leave: Provided, That documentation of hours in excess of one full-time certificated year of experience in any twelve-month period is not required;

(iii) The quotient of the hours, or other unit of measure, determined in (b)(ii) of this subsection divided by the hours, or other unit of measure, in (b)(i) of this subsection rounded to two decimal places for each year;

(iv) The name and address of the employer;

(v) For those counting experience outside of the school district or charter school pursuant to WAC 392-121-264 (1)(a), evidence whether or not the position required professional education certification pursuant to WAC 392-121-264 (1)(a)(ii);

(vi) For those counting experience pursuant to WAC 392-121-264 (1)(b), a brief description of the previous employment which documents the school district's or charter school's decision that the position was comparable to one requiring certification in the Washington school districts;

(vii) For those counting management experience pursuant to WAC 392-121-264 (1)(e), evidence that the experience meets the requirements of WAC 181-77-003(6);

(viii) For those counting experience (for educational staff associates) pursuant to WAC 392-121-264 (1)(f), evi-

dence that the previous employment meets the requirements in the applicable subsections of WAC 392-121-264 (1)(f).

(6) Any documentation required by this section may be original or copies of the original: Provided, That each copy is subject to school district or charter school acceptance or rejection.

(7) The falsification or deliberate misrepresentation, including omission of a material fact concerning degrees, credits, or experience by an education practitioner as defined in WAC 181-87-035 shall be deemed an act of unprofessional conduct pursuant to WAC 181-87-050. In such an event the provisions of chapters 181-86 and 181-87 WAC shall apply.

WSR 16-23-124

PROPOSED RULES

HORSE RACING COMMISSION

[Filed November 21, 2016, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-17-026.

Title of Rule and Other Identifying Information: WAC 260-40-090 Registration certificate.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 13, 2017, at 9:30 a.m.

Date of Intended Adoption: January 13, 2017.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by January 11, 2017.

Assistance for Persons with Disabilities: Contact Patty Brown by January 11, 2017, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To correct a typographical error.

Reasons Supporting Proposal: The word "prize" should be "price" in the current section.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

November 21, 2017 [2016]

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 07-07-010, filed 3/8/07, effective 4/8/07)

WAC 260-40-090 Registration certificate. No horse may be allowed to start unless a Jockey Club registration certificate, American Quarter Horse Association certificate of registration, or other applicable breed certificate of registration is on file in the office of the racing secretary, except that the stewards may waive this requirement, if the horse is otherwise properly identified and the horse is not entered for a claiming (~~prize~~) price.

WSR 16-23-125

PROPOSED RULES

HORSE RACING COMMISSION

[Filed November 21, 2016, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-23-009.

Title of Rule and Other Identifying Information: WAC 260-70-590 Reporting to the test barn.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 13, 2017, at 9:30 a.m.

Date of Intended Adoption: January 13, 2017.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by January 11, 2017.

Assistance for Persons with Disabilities: Contact Patty Brown by January 11, 2017, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To allow for the future possibility of using hair as a means of testing.

Reasons Supporting Proposal: Hair testing has the capability to detect prohibited substances for a longer period of time.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

November 21, 2017 [2016]

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 07-07-036, filed 3/12/07, effective 4/12/07)

WAC 260-70-590 Reporting to the test barn. (1) The official winning horse and any other horse ordered by the stewards, official veterinarian or the commission must be taken to the test barn to have a ~~((blood and/or urine sample))~~ hair, blood, urine sample, or a combination of each, taken at the direction of an official veterinarian.

(2) Random or extra testing may be required by the stewards, an official veterinarian, or the commission at any time on any horse on association grounds.

(3) A horse selected for testing must be taken directly to the test barn, unless otherwise directed by the stewards or an official veterinarian.

(4) Only persons currently licensed by the commission may enter the test barn on a race day. Licensees must have a valid reason for being in the test barn, and may be required to display their license. When accompanying a horse to the test barn no more than three licensees will be permitted to enter the test barn.

WSR 16-23-126
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 21, 2016, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-17-022.

Title of Rule and Other Identifying Information: WAC 260-48-920 Pick (n) pools.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 13, 2017, at 9:30 a.m.

Date of Intended Adoption: January 13, 2017.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by January 11, 2017.

Assistance for Persons with Disabilities: Contact Patty Brown by January 11, 2017, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify when the "will pays" may be displayed to the public.

Reasons Supporting Proposal: Current rule is not clear as to when and to whom the will pays may be released.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

November 21, 2017 [2016]
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-03-074, filed 1/13/12, effective 2/13/12)

WAC 260-48-920 Pick (n) pools. (1) The pick (n) requires selection of the first-place finisher in each of a designated number of races. The association must obtain written approval from the executive secretary concerning the scheduling of pick (n) races, the designation of one of the methods prescribed in part (2), and the amount of any cap to be set on the carryover. The number of races so designated must be more than three (3), but no greater than ten (10). Any changes to the approved pick (n) format require prior approval from the executive secretary.

(2) The pick (n) pool will be apportioned under one of the following methods:

(a) Method 1, pick (n) with carryover: The net pick (n) pool and carryover, if any, will be distributed as a single price pool to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool will be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races; and the remainder will be added to the carryover.

(b) Method 2, pick (n) with minor pool and carryover: The major share of the net pick (n) pool and the carryover, if any, will be distributed to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool will be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) races, the minor share of the net pick (n) pool will be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races; and the major share will be added to the carryover.

(c) Method 3, pick (n) with no minor pool and no carryover: The net pick (n) pool will be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races, based upon the official order of finish. If there are no winning wagers, the pool is refunded.

(d) Method 4, pick (n) with minor pool and no carryover: The major share of the net pick (n) pool will be distributed to those who selected the first place finisher in the greatest number of pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool will be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) races, the minor share of the net pick (n) pool will be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races. If the greatest number of first-place finishers selected

is one (1), the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.

(e) Method 5, pick (n) with minor pool and no carryover: The major share of net pick (n) pool will be distributed to those who selected the first-place finisher in each of the pick (n) races, based upon the official order of finish. The minor share of the net pick (n) pool will be distributed to those who selected the first-place finisher in the second greatest number of pick (n) races, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all pick (n) races, the entire net pick (n) pool will be distributed as a single price pool to those who selected the first-place finisher in the greatest number of pick (n) races. If there are no wagers selecting the first-place finisher in a second greatest number of pick (n) races, the minor share of the net pick (n) pool will be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the pick (n) races. If there are no winning wagers, the pool is refunded.

(f) Method 6, pick (n) with minor pool, jackpot pool, major carryover and jackpot carryover: Predetermined percentages of the net pick (n) pool will be set aside as a major pool, minor pool and jackpot pool. The major share of the net pick (n) pool and the major carryover, if any, will be distributed to those who selected the first-place finisher of each of the pick (n) races, based on the official order of finish. If there are no tickets selecting the first-place finisher in each of the pick (n) races, the major net pool will be added to the major carryover. If there is only one single ticket selecting the first-place finisher of each of the pick (n) races, based on the official order of finish, the jackpot share of the net pick (n) pool and the jackpot carryover, if any, will be distributed to the holder of that single ticket, along with the major net pool and the major carryover, if any. If more than one ticket selects the first-place finisher of each of the pick (n) races the jackpot net pool will be added to the jackpot carryover. The minor share of the net pick (n) pool will be distributed to those who selected the first-place finisher of the second greatest number of pick (n) races, based on the official order of finish. If there are no wagers selecting the first-place finisher of all pick (n) races, the minor net pool of the pick (n) pool will be distributed as a single price pool to those who selected the first-place finisher of the greatest number of pick (n) races.

(3) If there is a dead heat for first in any of the pick (n) races involving:

(a) Horses representing the same betting interest, the pick (n) pool will be distributed as if no dead heat occurred.

(b) Horses representing two or more betting interests, the pick (n) pool will be distributed as a single price pool with each winning wager receiving an equal share of the profit.

(4) Should a betting interest in any of the pick (n) races be scratched:

(a) The racing association may allow patrons the option of selecting an alternate betting interest prior to the running of the first leg of the pick (n). The selected alternate betting interest will be substituted for the scratched betting interest, for all purposes, including pool calculations.

(b) If no alternate betting interest is selected or the selected alternate betting interest is also scratched, the actual

favorite, as evidenced by total amounts wagered in the win pool at the close of wagering on that race, will be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the win pool total for two or more favorites is identical, the substitute selection will be the betting interest with the lowest program number. The parimutuel system will produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination.

(5) The pick (n) pool will be canceled and all pick (n) wagers for the individual race day will be refunded if:

(a) At least three races included as part of a pick 4, pick 5 or pick 6 are canceled or declared "no contest."

(b) At least four races included as part of a pick 7, pick 8 or pick 9 are canceled or declared "no contest."

(c) At least five races included as part of a pick 10 are canceled or declared "no contest."

(6) If at least one race included as part of a pick (n) is canceled or declared "no contest," but not more than the number specified in subsection 5 of this rule, the net pool will be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) races for that race day. Such distribution will include the portion ordinarily retained for the pick (n) carryover but not the carryover from previous race days.

(7) The pick (n) carryover may be capped at a designated level approved by the commission so that if, at the close of any race day, the amount in the pick (n) carryover equals or exceeds the designated cap, the pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the pick (n) carryover is frozen, 100 percent of the net pool, part of which ordinarily would be added to the pick (n) carryover, will be distributed to those whose selection finished first in the greatest number of pick (n) races for that race day.

(8) A written request for permission to distribute the pick (n) carryover on a specific race day may be submitted to the executive secretary. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and race day for the distribution.

(9) Should the pick (n) carryover be designated for distribution on a specified date and race day in which there are no wagers selecting the first-place finisher in each of the pick (n) races, the entire pool will be distributed as a single price pool to those whose selection finished first in the greatest number of pick (n) races. The pick (n) carryover will be designated for distribution on a specified date and race day only under the following circumstances:

(a) Upon written approval from the commission as provided in subsection 8 of this rule.

(b) Upon written approval from the executive secretary when there is a change in the carryover cap, a change from one type of pick (n) wagering to another, or when the pick (n) is discontinued.

(c) On the closing race day of the meet or split meet.

(10) If, for any reason, the pick (n) carryover must be held over to the corresponding pick (n) pool of a subsequent meet, the carryover will be deposited in an interest-bearing

account approved by the commission. The pick (n) carryover plus accrued interest will then be added to the net pick (n) pool of the following meet on a date and race day so designated by the commission.

(11) With the written approval of the executive secretary, the association may contribute to the pick (n) carryover a sum of money up to the amount of any designated cap.

(12) Providing information to any person that is not made available to the public regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is ~~((strictly))~~ prohibited.

(13) The total amount of the net pool and information of probable payouts for each of the runners when the last race of the pick (n) wager is the only race remaining to be run may be displayed to the public.

This will not prohibit necessary communication between parimutuel system and parimutuel department employees for processing of pool data.

~~((13))~~ (14) The association may suspend previously-approved pick (n) wagering with the prior approval of the executive secretary. Any carryover will be held until the suspended pick (n) wagering is reinstated. An association may request approval of a pick (n) wager or separate wagering pool for specific race day.

WSR 16-23-127

PROPOSED RULES

HORSE RACING COMMISSION

[Filed November 21, 2016, 10:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-123.

Title of Rule and Other Identifying Information: WAC 260-12-180 Safety equipment required.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on January 13, 2017, at 9:30 a.m.

Date of Intended Adoption: January 13, 2017.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by January 11, 2017.

Assistance for Persons with Disabilities: Contact Patty Brown by January 11, 2017, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update current standards for safety equipment.

Reasons Supporting Proposal: Industry standards have been updated since the last amendment of this section.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326

Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

November 21, 2017 [2016]

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 13-13-041, filed 6/14/13, effective 7/15/13)

WAC 260-12-180 Safety equipment required. (1)

When on association grounds, all persons on horseback must wear a securely fastened safety helmet that meets current standards for equipment designed and manufactured for use while riding horses as established by ~~((the))~~:

(a) American Society for Testing and Materials (ASTM F1163)~~((;))~~.

(b) UK Standards (EN-1384 ~~((and))~~ or PAS-015~~((; or;))~~ or VG1).

(c) Australian/New Zealand Standard (AS/NZ 3838 or ARB HS 2012).

(d) Snell Equestrian Standard 2001.

(2) All persons on horseback must wear a securely fastened safety vest that is designed to provide shock-absorbing protection of:

(a) British Equestrian Trade Association (BETA):2000 Level 1.

(b) American Society for Testing and Materials (ASTM ~~((1163))~~) F2681-08 or ~~((1937 (Specification for Body Protectors Used in Horse Sports and Horseback Riding)))~~ F1937-04.

(c) Euro Norm (EN) 13158:2000 Level 1.

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3.

(e) Australian Racing Board (ARB) Standard ~~((1198))~~ 1.1998.

(3) All persons on horseback must wear equestrian footwear that covers the rider's ankle with a minimum of a 1/2 inch heel, except jockeys while riding in a race who must wear jockey boots as required by WAC 260-32-100.

This rule does not apply to nonracing related events conducted for entertainment purposes. Safety equipment for such entertainment events shall be at the discretion of the racing association.

WSR 16-23-137

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed November 22, 2016, 7:29 a.m.]

Supplemental Notice to WSR 16-17-136.

Preproposal statement of inquiry was filed as WSR 16-11-033.

Title of Rule and Other Identifying Information: WAC 468-38-265 Tow trucks—Permitting for oversize/over-

weight, states are directed by the federal provision in the Fixing America's Surface Transportation Act (FAST Act) to exempt tow trucks from weight limits to expedite moving disabled vehicles.

Hearing Location(s): Transportation Building, Nisqually Board Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504, on January 5, 2017, at 2:30 p.m.

Date of Intended Adoption: January 5, 2017.

Submit Written Comments to: Anne Ford, P.O. Box 47367, Olympia, WA 98504-7367, e-mail fordA@wsdot.wa.gov, fax (360) 705-7341, by January 4, 2017.

Assistance for Persons with Disabilities: Contact Grant Heap by January 4, 2016 [2017], (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amending WAC 468-38-265 was initiated by a federal proposal in the FAST Act.

"(6) Is there ever a time when a heavy duty tow truck can move in combination exceeding legal weights without a permit?"

When a heavy duty tow truck weighs the same or greater than the disabled vehicle, a permit is not required to move the disabled vehicle from the place where the vehicle became disabled to the nearest appropriate repair facility. The operator shall check the restrictions on WSDOT's commercial vehicle services web site prior to each movement. The load bearing axle(s) of the combination shall not exceed:

- (a) Six hundred pounds per inch width of tire;
- (b) Twenty-two thousand pounds per single axle;
- (c) Forty-three thousand pounds per tandem axle set;
- (d) Weight limits for axle groups per formula in RCW 46.44.091; and
- (e) Posted limits and restrictions listed on WSDOT's commercial vehicle services web site on the route traveled."

Statutory Authority for Adoption: RCW 46.44.090, 46.44.0941.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: WSDOT traffic office, commercial vehicle services, governmental.

Name of Agency Personnel Responsible for Drafting: Justin Heryford, 7345 Linderson Way S.W., Tumwater, WA, (360) 705-7987; Implementation: Anne Ford, 7345 Linderson Way S.W., Tumwater, WA, (360) 705-7341; and Enforcement: Captain Michael Dahl, 210 11th Street, Olympia, WA (General Administration Building), (360) 596-3800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is proposed to comply with federal regulation.

A cost-benefit analysis is not required under RCW 34.05.328. There is no additional cost related to this proposal.

November 22, 2016
Kara Larsen, Director
Risk Management
and Legal Services

AMENDATORY SECTION (Amending WSR 04-16-060, filed 7/30/04, effective 8/30/04)

WAC 468-38-265 Tow trucks—Permitting for over-size/overweight. (1) **What classes of tow trucks are eligible for special permits?**

Special permits may be issued to Class B and Class C tow trucks, including Class E tow trucks with either a Class B or Class C rating.

(2) **What is the duration of a special permit issued to tow trucks?**

The special permit issued specifically to tow trucks is an annual permit from date of purchase.

(3) **Are there size and weight limitations and/or requirements to the special permit for tow trucks?**

Permit limits and/or requirements are categorized as follows:

(a) **Weight of tow truck:** Maximum weights for tow trucks are as follows:

(i) All classes of tow trucks must conform to RCW 46.44.041 when towing a disabled unit by draw bar or tow chain method.

(ii) When any portion of the weight of the disabled unit rests upon a Class B, C or E (with B or C rating) tow truck; the weight must not exceed:

(A) Six hundred pounds per inch width of tire up to twenty-two thousand pounds per single axle; or

(B) Forty-three thousand pounds per tandem axle set; or

(C) The weight allowed for axle groups per formula in RCW 46.44.091(1).

(iii) The tow truck steer axle must carry sufficient weight to maintain safe operation.

(iv) A Class B tow truck steer axle must carry a minimum of three thousand pounds at all times.

(v) A Class C tow vehicle steer axle must carry a minimum of three thousand five hundred pounds at all times.

(vi) A Class E tow truck with B or C rating must meet the requirement for minimum steer axle load for the rating.

(vii) The special permit does not allow a tow truck to exceed legal weight limits when not in tow or haul status.

(b) **Weight of disabled unit:** Maximum weight for disabled units towed under an annual special permit are as follows:

(i) When being towed by a Class B, C or E (with B or C rating) tow truck, using a draw bar or tow chain method, the weight of the disabled unit must conform with weight limits in RCW 46.44.041, or to the limits of any special permit issued to the disabled unit.

(ii) When a Class B, C or E (with B or C rating) tow truck carries a portion of the weight of the disabled unit, the first load bearing axle(s) of the disabled unit must not exceed:

(A) Six hundred pounds per inch width of tire;

(B) Twenty-two thousand pounds per single axle;

(C) Forty-three thousand pounds per tandem axle set; and

(D) Weight limits for axle groups per formula in RCW 46.44.091.

(iii) A load recovery vehicle configured as a truck-tractor/semi-trailer, or solo vehicle may carry either a divisible or nondivisible load. The recovery vehicle is limited to weight limits in RCW 46.44.041 when carrying divisible loads, or to

the weight limits in (a)(ii) of this subsection when carrying nondivisible loads. The recovery vehicle must be rated as either a Class B or Class C tow truck in order to be issued the annual special permit.

(c) **Height and width:** No disabled unit, including load, shall exceed fourteen feet in height or eight feet six inches in width, except:

(i) When the disabled unit is authorized under a special permit allowing a greater height or width. The allowances granted under the special permit shall apply only to the route identified on the special permit; or

(ii) Where an accident or collision has caused a disfigurement of the disabled unit resulting in a width greater than eight feet six inches, but not exceeding ten feet in width. In this event, during daylight hours the disabled unit must be flagged per WAC 468-38-155, and during the hours of darkness the extreme width must have clearance lights that comply with the requirements of *Code of Federal Regulation*, 49 C.F.R. 393.11.

(iii) Rear view mirrors may exceed the width authorized in the special permit to a point that allows the driver a view to the rear along both sides of the vehicle(s) in conformance with *Federal National Safety Standard 111* (49 C.F.R. 571.111).

(d) **Length:** All classes of single unit tow vehicles may not exceed forty feet in length. The length of the disabled unit shall not exceed the length for such vehicle established in statute or as allowed by a special permit issued to the disabled unit. The towing of a vehicle combination (i.e., tractor/trailer or truck/trailer) is not authorized, except during an emergent situation when directed by the state patrol or the department to remove the disabled combination to the nearest safe location off the highway.

(e) **Restrictions and postings:** An annual special permit must not be used to exceed published road and bridge restrictions, or posted bridges. Restrictions and postings should be reviewed online daily for changes, each permit will contain this instruction. It is the operator's responsibility to remain current with bridge restriction and posting information.

(f) **Exceptions:** Exceptions to the rules provided in this section will be handled on an individual basis by separate special permit, after the disabled unit has been moved to the nearest safe location.

(4) Is there ever a time when a Class A or D tow truck is authorized to exceed legal weight?

Class A and D tow trucks are not eligible for special permits. In an emergent situation, when no other class of truck is available, either class truck may make or assist in making short moves, at the direction of the state patrol or the department, to the nearest safe location off the highway.

(5) What constitutes an emergent situation?

An emergent situation, for purposes of this section, is defined as a disabled vehicle on any public highway, including shoulders and access ramps.

(6) Is there ever a time when a heavy duty tow truck can move in combination exceeding legal weights without a permit?

When a heavy duty tow truck weighs the same or greater than the disabled vehicle, a permit is not required to move the disabled vehicle from the place where the vehicle became

disabled to the nearest appropriate repair facility. The operator shall check the restrictions on WSDOT's commercial vehicle web site prior to each movement. The load bearing axle(s) of the combination shall not exceed:

(a) Six hundred pounds per inch width of tire;

(b) Twenty-two thousand pounds per single axle;

(c) Forty-three thousand pounds per tandem axle set;

(d) Weight limits for axle groups per formula in RCW 46.44.091; and

(e) Posted limits and restrictions listed on WSDOT's commercial vehicle services web site on the route traveled.

WSR 16-23-151

PROPOSED RULES

**EASTERN WASHINGTON
STATE HISTORICAL SOCIETY**

[Filed November 22, 2016, 12:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-082.

Title of Rule and Other Identifying Information: Chapter 42.56 RCW the Washington State Public Records Act; RCW 42.56.040; RCW 27.34.070, state historical societies, powers and duties; and chapter 43.21C RCW the State Environmental Policy Act (SEPA).

Hearing Location(s): Eastern Washington State Historical Society (EWSHS) (aka Northwest Museum of Arts and Culture "MAC"), 2316 West 1st Avenue, Spokane, WA 99201, on January 4, 2017, at 2:30 p.m.

Date of Intended Adoption: February 6, 2017.

Submit Written Comments to: Betsy Godlewski, 2316 West 1st Avenue, Spokane, WA 99201, e-mail betsy.godlewski@northwestmuseum.org, fax (509) 363-5303, by December 31, 2017 [2016].

Assistance for Persons with Disabilities: Contact Betsy Godlewski by January 2, 2017, (509) 363-5304.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: EWSHS is governed by chapter 27.34 RCW and as such is required by RCW 42.56.040 to adopt rules reflecting the organization and operation of EWSHS and a description of the procedures for individuals to request public records from the institution including where to request records, who to request records from and the methods for submitting requests for records. Eastern Washington state [EWSHS] is also required by RCW 27.34.-070 to adopt rules to govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests and devises. EWSHS is required to adopt rules pertaining to the integration of the policies and procedures of SEPA pursuant to RCW 43.21C.120.

Statutory Authority for Adoption: Chapter 27.34 RCW.

Statute Being Implemented: RCW 42.56.040, 27.34.070, 43.21C.120.

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

Name of Proponent: EWSHS, governmental.

Name of Agency Personnel Responsible for Drafting: EWSHS Board of Trustees, Donna Weaver, President, 2316 West 1st Avenue, (509) 363-5304; Implementation: Interim Executive Director Tim Carney, 2316 West 1st Avenue, (509) 363-5319; and Enforcement: Interim Executive Director Tim Carney, EWSHS Board of Trustees, Donna Weaver, President, 2316 West 1st Avenue, (509) 363-5319.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have any impact on small business, rather the rules are simply implementing rules that are mandated by the legislature related to the operations of EWSHS.

A cost-benefit analysis is not required under RCW 34.05.328. These rules do not fall under the provisions of RCW 34.05.328. Rather the rules relate only to internal governmental operations of EWSHS.

November 22, 2016
Betsy Godlewski
Development Director

Chapter 256-10 WAC

EASTERN WASHINGTON STATE HISTORICAL SOCIETY—ORGANIZATION AND OPERATION

NEW SECTION

WAC 256-10-010 Organization. (1) The eastern Washington state historical society is a designated trustee for the state. It is also a registered 501 (c)(3) public benefit corporation. The eastern Washington state historical society operates a state museum which supports cultural, artistic, and educational activities and performs other responsibilities as required pursuant to RCW 27.34.070. The eastern Washington state historical society's central office is located at 2316 W 1st Avenue, Spokane, WA 99201. Normal business hours are 10:00 a.m. to 5:00 p.m., Tuesday through Sunday, and Wednesday 10:00 a.m. to 8:00 p.m. except museum holidays.

(2) The institution is governed by a board of trustees. The board appoints the executive director with the consent of the governor. The executive director is responsible for the day-to-day operations of the institution and establishes the structure of the administration.

(3) The eastern Washington state historical society is organized into divisions, administered by individuals, who supervise the following areas: Facilities; business and finance; exhibit preparation; development; collection management; guest services; archiving; curation; education; volunteer coordination; and marketing. All directors are directly responsible for operations within their divisions. The directors directly report to the executive director of the society. The executive director reports to the society's governing board.

(4) The public may obtain information, make submittals or requests, and obtain copies of society's decisions by contacting the society's designated public records officer staff located in the principal place of business. Additional and detailed information concerning the university is available through the university's web site at www.northwestmuseum.org.

NEW SECTION

WAC 256-10-020 Operations and procedures. (1) Society rules are promulgated in accordance with the Administrative Procedure Act (APA), chapter 34.05 RCW and approved by the governing board.

(2) The society may promulgate internal policies that are not governed by the APA. Policies that are generally applicable to the society are approved by the governing board.

(3) Informal procedures regarding society operations typically include:

(a) Decisions made by persons authorized by board resolution, the executive director or any designee to make a decision within the scope of responsibility assigned to such person; or

(b) Methods of persuasion used by any person in an attempt to influence society decisions.

NEW SECTION

WAC 256-10-030 Society rules library. The society maintains a repository of its WAC and policies, which are open to the general public, at www.northwestmuseum.org. This repository includes current substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the society. Historical amendments, revisions, and/or former provisions may be obtained by inquiry or request to the office of the society's executive directors.

Chapter 256-20 WAC

EASTERN WASHINGTON STATE HISTORICAL SOCIETY—PUBLIC RECORDS

NEW SECTION

WAC 256-20-010 Authority and purpose. (1) RCW 42.56.070(1) requires eastern Washington state historical society to make available for inspection and copying nonexempt "public records" in accordance with published rules. Chapter 42.56 RCW, Public Records Act (act) defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the eastern Washington state historical society.

(2) The purpose of these rules is to establish the procedures eastern Washington state historical society will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the eastern Washington state historical society and establish processes for both requestors and eastern Washington state historical society staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out

its responsibilities under the act, the eastern Washington state historical society will be guided by the provisions of the act describing its purposes and interpretation.

NEW SECTION

WAC 256-20-020 Eastern Washington state historical society description—Contact information—Public records officer. (1) Any person wishing to request access to public records of eastern Washington state historical society, or seeking assistance in making such a request, should contact the public records officer of the eastern Washington state historical society:

Public Records Officer
Eastern Washington State Historical Society
2316 W 1st Avenue
Spokane, WA 99201
Phone: 509-456-3931
E-mail: themac@northwestmuseum.org

Information is also available at the eastern Washington state historical society's web site at <http://www.northwestmuseum.org/>.

(2) The public records officer will oversee compliance with the act but another eastern Washington state historical society staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee and the eastern Washington state historical society will provide the "fullest assistance" to requestors; create and maintain for use by the public and eastern Washington state historical society officials an index to public records of the eastern Washington state historical society; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the eastern Washington state historical society.

NEW SECTION

WAC 256-20-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the eastern Washington state historical society, Tuesdays through Fridays during normal business hours, excluding legal holidays. The eastern Washington state historical society and requestor can also make mutually agreeable arrangements for the times of inspection and copying. Records must be inspected at the offices of the eastern Washington state historical society.

(2) **Records index.** An index of public records, which includes eastern Washington state historical society's policies, is available for use by members of the public. The index may be accessed online at <http://www.northwestmuseum.org/>.

(3) **Organization of records.** The eastern Washington state historical society will maintain its records in a reasonably organized manner. The eastern Washington state historical society will take reasonable actions to protect records from damage and disorganization. A requestor shall not take

eastern Washington state historical society records from eastern Washington state historical society offices without the permission of the public records officer or designee. A variety of records are available on the eastern Washington state historical society web site at <http://www.northwestmuseum.org/>.

Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the eastern Washington state historical society should make the request in writing on the eastern Washington state historical society's public records request form and address it to the public records officer and include the following information:

(i) The requestor's name, mailing address, telephone number, and any e-mail address;

(ii) Identification of the public records adequate for the public records officer or designee to locate the records; and

(iii) The date of the request.

(b) The requestor should indicate whether he/she wishes to inspect the records, obtain copies of the records, or both. If the request is for copies, the requestor will make arrangements to pay for copies of the records. Pursuant to WAC 256-10-070, standard photocopies will be provided at fifteen cents per page.

(c) The requestor should indicate whether the request is for printed or digital copies of the public records.

(d) If the request is for a list of individuals, the requestor will provide confirmation as to whether the list will be used for any commercial purposes or confirmation that the requestor is authorized or directed by law to obtain the list of individuals for commercial purposes, with a specific reference to that law.

(e) A form is available for use by requestors at the office of the public records officer and online at <http://www.northwestmuseum.org/>.

(f) The public records officer or designee may accept requests for public records by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

WAC 256-20-040 Processing of public records requests—General. (1) Acknowledging receipt of request. Within five business days of receipt of the public records request, the public records officer will respond by:

(a) Notifying the requestor that the documents requested for inspection are available, and make the records available for inspection;

(b) Providing copies of the requested documents to requestor if payment of a deposit for the copies, if any, is made or terms of payment are agreed upon;

(c) Acknowledging receipt of the request, and provide a reasonable estimate of when records will be available. Additional time for eastern Washington state historical society to respond may be based upon:

(i) Need to identify, locate, assemble and/or make the records ready for inspection or disclosure;

(ii) Need to notify third persons or agencies affected by the request;

(iii) Need to determine whether any of the records or information requested is exempt from disclosure and whether a denial should be made as to all or part of the request; or

(iv) Need to clarify the request, if it is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone; or

(d) Denying the request.

(2) **Consequences of failure to respond.** If the eastern Washington state historical society does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(3) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of third persons or agencies and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the eastern Washington state historical society believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(5) **Inspection of records.**

(a) Consistent with other business demands, the eastern Washington state historical society will provide space to inspect public records. No requestor or representative of the requestor may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the eastern Washington state historical society to copy.

(b) The requestor must claim or review the assembled records within thirty days of eastern Washington state historical society's notification to him or her that the records are available for inspection or copying. The eastern Washington state historical society will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the eastern Washington state historical society to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the eastern Washington state historical society may close the request and refile the assembled records. Other

public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(7) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the eastern Washington state historical society has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the eastern Washington state historical society has closed the request.

(10) **Later discovered documents.** If, after the eastern Washington state historical society has informed the requestor that it has provided all available records, the eastern Washington state historical society becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

NEW SECTION

WAC 256-20-050 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the eastern Washington state historical society and is generally commercially available, or in a format that is reasonably translatable from the format in which the eastern Washington state historical society keeps the record. Costs for providing electronic records are governed by WAC 44-14-07003.

NEW SECTION

WAC 256-20-060 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure.

(2) Eastern Washington state historical society is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 256-20-070 Costs of providing copies of public records. (1) **Costs for inspection.** There is no fee for inspecting public records.

(2) **Costs for standard copies.** A requestor may obtain standard black and white photocopies, 8.5" x 11" for fifteen cents per page.

(3) **Costs of nonstandard copies.** Nonstandard copies include nonstandard black and white copies, color copies, engineering drawings, and photographs. An eastern Washington state historical society requestor will be charged the actual costs for nonstandard photocopies.

(4) **Use of outside vendor.** Eastern Washington state historical society is not required to copy records at its own facilities. Eastern Washington state historical society can send the project to a commercial copying center and bill the requestor for the amount charged by the vendor.

(5) **Costs for electronic records.** The cost of electronic copies of records shall be the cost of the disk or storage device. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(6) **Costs of mailing.** The eastern Washington state historical society may also charge actual costs of mailing, including the cost of the shipping container.

(7) **Payment.** Payment may be made by cash, check, or money order to the eastern Washington state historical society. Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The eastern Washington state historical society will not charge sales tax when it makes copies of public records.

NEW SECTION

WAC 256-20-080 Review of denials of public records. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the eastern Washington state historical society official designated by the eastern Washington state historical society to conduct the review. That person will immediately consider the petition and either affirm or reverse the denial within two business days following eastern Washington state historical society's receipt of the petition, or

within such other time as eastern Washington state historical society and the requestor mutually agree to.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if eastern Washington state historical society denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 regardless of any internal administrative appeal.

Chapter 256-30 WAC

EASTERN WASHINGTON STATE HISTORICAL SOCIETY—GIFTS, GRANTS, CONVEYANCES, BEQUESTS AND DEVICES

NEW SECTION

WAC 256-30-010 Purpose. Eastern Washington state historical society (society) has the power and authority to accept gifts, grants, conveyances, bequests, of real or personal property or both, whether or not these are held in trust or otherwise. It is also authorized to sell, lease, exchange, invest, or expend the same or the proceeds from rents, profits, and income except as limited by the donor's terms. The society is required by law to adopt rules to:

(1) Govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all gifts, grants, conveyances, bequests and devises to the society;

(2) Ensure compliance with state and federal laws, rules and regulations, society policies, northwest museum of arts and culture foundation policies, and professional standards of ethical and donor-centered fund-raising; and

(3) Provide protocols for individuals soliciting or accepting gifts on behalf of the society.

The purpose of these rules is to fulfill the society's legal responsibility to adopt these rules.

NEW SECTION

WAC 256-30-020 Definitions. (1) "Bequest" means property or money that an individual promises to give to another person or organization after he or she dies.

(2) "Bond" means an official document in which a government or company promises to pay back an amount of money that it has borrowed and to pay interest for the borrowed money.

(3) "Conveyance" means the transfer or delivery of an item to another, commonly used to describe the transfer of title to land from one person to another by deed.

(4) "Devise" means a testamentary disposition of land or realty, a gift of real property by the last will and testament of the donor.

(5) "Eastern Washington state historical society" means a 501 (c)(3) corporation and a trustee for the state of Washington pursuant to chapter 27.34 RCW. The society is responsible for collecting, cataloging and preserving objects, manuscripts, sites, photographs and other items that illustrate

the cultural, artistic, and natural history of the state and in this capacity operates a state museum which supports cultural, artistic, and educational activities and performs other responsibilities as required pursuant to RCW 27.34.070.

(6) "Grant" means to legally or formally transfer a possession.

(7) "Northwest museum of arts and culture foundation" means the foundation's articles of incorporation specify that its purpose is to support the society and it has important fiduciary responsibilities related to the funds it holds on behalf of the society. The foundation is a separate 501 (c)(3) corporation and the society does not have authority to direct the activities of the foundation. Similarly the foundation does not have authority to direct the activities of the society.

(8) "Personal property" means something that is owned by a person, business or other entity such as goods, money, notes, bonds, stocks, merchandise, furniture, etc. It does not include land, an interest in land, buildings, or items affixed to the land.

(9) "Real property" means land, including all natural resources, and generally whatever is erected or growing upon or affixed to the land including buildings and crops.

(10) "Restricted gift" means an item that is voluntarily conveyed or bestowed to the society without compensation. It may include money, securities, stocks, bonds, negotiable instruments, and real or personal property. The donor imposes conditions of ownership, retention deposition or use of the item given.

(11) "Security" means an instrument of investment in the form of a document (such as a stock certificate or bond) providing evidence of its ownership.

(12) "Stock" means a share of the value of a company which can be bought, sold, or traded as an investment.

(13) "Trust" means property, real or personal, or money held by some person, firm or corporation for the benefit of the society.

(14) "Unrestricted gift" means an item that is voluntarily conveyed or bestowed to the society without compensation. It may include money, securities, stocks, bonds, negotiable instruments, and real or personal property. The donor does not specify the imposition of any conditions as to the ownership or use of the gift.

NEW SECTION

WAC 256-30-030 Procedures for accepting gifts.

(1) Donors: The society greatly values its donors and their support of the society. Society staff will treat donors with respect and professionalism. Donors will be acknowledged and thanked for their gifts in writing within a reasonable period of time, generally not to exceed one month.

(2) Donor intent: Society staff and representatives agree to respect and carry out the intentions of the donors whose gifts, grants, conveyances, bequests, or devises have been accepted by the society or the foundation on behalf of the society.

(3) Gift documentation: The society will document the receipt of all gifts. Some gifts may be accompanied by a letter or form from the donor. Ideally, the donor's gift form or letter will record:

- (a) The name of donor(s);
- (b) The date the gift was received;
- (c) A brief description of the item(s);
- (d) Serial number (if any);
- (e) The gift's value;
- (f) A declaration that the gift is irrevocable; and
- (g) The purpose of the gift.

If a gift form or letter does not accompany the gift, the society staff shall prepare and send a letter to the donor which documents this information.

NEW SECTION

WAC 256-30-040 Income tax charitable deductions.

Receipts shall be issued for gifts that qualify for income tax charitable deductions.

(1) Cash and checks: Cash and checks may be accepted regardless of the amount. The value of any cash or check gift is its face value. Checks should be written to the eastern Washington state historical society or EWSHS.

(2) Real or personal property: If the gift is personal or real property the society may document the value of the gift as it was formally appraised or accept the donor's stated value as a good faith estimate.

(3) Life insurance: If the donor named the society as the beneficiary of a new or existing whole life insurance policy, the designation will be recorded as a gift, at its present value, when the gift becomes irrevocable. Alternatively, when the society is named as both beneficiary and irreversible owner of a whole life insurance policy, it will be recorded as a gift.

(4) Charitable remainder trusts, charitable lead trusts, and willed bequests: The income from a trust and/or a willed legacy will be recorded as a gift, at its present value, when a gift becomes irreversible.

(5) Retirement plan beneficiary designations: If a donor designates the society as a beneficiary of his or her retirement plan, it will be recorded as a gift, at its present value, when the gift becomes irreversible/permanent.

(6) Gifts in-kind: These include gifts of time and services. The society will record the donation of time and services, but will not identify a dollar value.

NEW SECTION

WAC 256-30-050 Donations to the society.

(1) When the society receives a donation, it shall comply with all the rules and regulations related to gift giving for gifts it receives directly. Those rules are found in state, federal and corporate law related to:

- (a) State entities and public 501 (c)(3) corporations;
- (b) Federal and state laws and regulations that apply to the society as a 501 (c)(3) corporation including, but not limited to, the U.S. Internal Revenue Service Code; and
- (c) Professional standards of ethical and donor-centered fund-raising.

(2) The society cannot have ownership in stocks nor can it make gifts of public funds.

(3) Private funds donated directly to the society shall be held consistent with all state rules and regulations governing expenditure of those funds.

(4) Restricted funds shall be kept in a separate line account as nonlapsing funds of the society together with earned interest and shall be used in accordance with the directions provided by the donor.

(5) Unrestricted funds shall be retained in a separate line account of the society as nonlapsing funds. Disbursement shall be made by the executive director in accordance with policy established by the board of trustees or in consultation with the board of trustees.

NEW SECTION

WAC 256-30-060 Donations to the northwest museum of arts and culture foundation. The northwest museum of arts and culture foundation, a separate 501 (c)(3) corporation was incorporated for the purpose of providing funds to support the operations and programs of the society. If the society receives any donations designated for the foundation, those donations shall be delivered to the foundation as soon as possible. All gifts designated for the society shall be retained by the society consistent with these regulations. If it is unclear whether a gift was intended to be given to the foundation or to the society, the society shall clarify the donor's intent and handle the donation consistently.

NEW SECTION

WAC 256-30-070 Deferred gifts. (1) The society welcomes and encourages deferred gifts such as:

- (a) Charitable remainder trusts;
- (b) Charitable lead trusts; and
- (c) Testamentary bequests.

(2) Society trustees and staff members shall not serve as an executor (personal representative) for a donor's estate.

(3) Society trustees and staff members shall not serve as trustee or co-trustee on a charitable remainder trust or a charitable lead trust.

(4) If planned gift illustrations or sample documents are provided to donors, they shall be provided free of charge and shall include the following disclaimer:

"The eastern Washington state historical society, northwest museum of arts and culture, strongly urges that you consult with your attorney, financial and/or tax advisor to review and approve this complimentary information. This information in no way constitutes advice. We will gladly work with your independent advisors to assist in any way we can."

NEW SECTION

WAC 256-30-080 Tangible personal property requirements. (1) The following requirements apply to tangible personal property that is donated with the intent for the society to sell:

(a) Acceptance of personal property is contingent on formal approval of the society's board of trustees. The board may delegate authority for approval with formal action which identifies who has delegated authority, and the limits of any such authority;

(b) Acceptance of property shall not violate any federal, state or local statute or ordinance; and the purposes for which

the item is being donated are permissible under the state expenditure rules which apply to donations to the society;

(c) All tangible property shall be valued by the proceeds from the sale or by a qualified appraisal;

(d) The society must be able to dispose of the property within a short time, normally not to exceed six months following the receipt of the gift; and

(e) The society shall adhere to all IRS requirements relating to the disposition of gifts of tangible personal property and shall provide appropriate forms to the donor and IRS where required.

(2) The following requirements apply to tangible personal property that is donated with the intent for the society to maintain:

(a) Acceptance of property shall not violate any federal, state or local statute or ordinance;

(b) The purpose for which the item is being donated shall be permissible under the state expenditure rules which apply to donations to the society;

(c) Acceptance of the property shall not interfere with the proper management and operations of the society;

(d) The property shall not place excessive burdens on the available society space, staff or budget;

(e) Use of the property shall not compromise the integrity of building structures or landscaping features;

(f) Use of gift shall not place the society in violation of the federal Occupational Safety and Health Act (OSHA) or the Washington Industrial Safety and Health Act (WISHA);

(g) Property does not require the society to employ a specified person now or at a future date;

(h) Property serves the mission, goals, and interests of the society;

(i) Property does not require the payment of maintenance costs or other expenses for which no specific provision has been made;

(j) Property cannot generate unrelated business income to the society which may jeopardize its tax-exempt status; and/or

(k) Acceptance of the property shall be financially sound.

NEW SECTION

WAC 256-30-090 Acceptance of artwork. In addition to the considerations outlined in WAC 256-30-080, prior to the acceptance of art, the society shall comply with the additional requirements of the society's *Collections Policies and Procedures, Board Policy 203*.

NEW SECTION

WAC 256-30-100 Acceptance of real estate. (1) The society may accept gifts of developed or undeveloped real estate. The following requirements apply to the acceptance of real estate:

(a) Acceptance of real estate is contingent on formal approval of the society's board of trustees;

(b) Acceptance of property shall not violate any federal, state or local statute or ordinance;

(c) The property shall be useful for the society's purposes;

(d) The purpose for which the item is being donated shall be permissible under the state expenditure rules which apply to donations to the society;

(e) The property shall be marketable;

(f) The donor agrees that the property can be sold at the society's discretion;

(g) Acceptance of property shall not violate any federal, state or local statute or ordinance; and the purpose for which the item is being donated is permissible under the state expenditure rules which apply to donations to the society;

(h) The society shall adhere to all IRS requirements relating to the disposition of gifts of real estate and shall provide appropriate forms to the donor and IRS where required;

(i) Acceptance of the property shall not interfere with the proper management and operations of the society;

(j) The acceptance of the real estate shall not place excessive burdens on the available society space, staff or budget;

(k) Possession of the property shall not place the society in violation of the Federal Occupational Safety and Health Act (OSHA) or the Washington Industrial Safety and Health Act (WISHA);

(l) Property does not require the society to employ a specified person now or at a future date;

(m) Property serves the mission, goals, and interests of the society;

(n) Property cannot generate unrelated business income to the society which may jeopardize its tax-exempt status; and

(o) Acceptance of the property shall be financially sound.

(2) Prior to any acceptance of real estate the following is required:

(a) Gifts of real estate must first be reviewed by the society's board of trustees before acceptance;

(b) The donor normally is responsible for obtaining and paying for an appraisal of the property. The appraisal must be performed by an independent, qualified appraiser;

(c) The society's board of trustees may require an environmental appraisal of any proposed gift of real estate;

(d) The appraisal shall contain photographs of the property, the tax map number, the assessed value, the current asking price, a legal description of the property, the zoning status, and complete information regarding all mortgages, liens, litigation, title disputes, and any environmental involvement;

(e) Depending on the value and desirability of the gift, the donor's connection with the society, and the donor's past gift record, the donor may be asked to pay for all or a portion of the following:

(i) Maintenance costs, if any;

(ii) Real estate taxes due prior to date of conveyance;

(iii) Insurance;

(iv) Real estate broker's commission and other costs of sale;

(v) Appraisal and preliminary title report costs; and

(vi) Environmental appraisal.

(f) The property shall be conveyed by warranty deed prior to the execution of any contract of sale by the grantor; and

(g) The value of any gift of real estate shall be its appraised value; however, this value may be reduced by costs

of maintenance, insurance, real estate taxes, broker's commissions, and other expenses of sale incurred by the society.

NEW SECTION

WAC 256-30-120 Acknowledgment—Receipt for gifts. On delivery of any contribution, the society is encouraged to provide a written acknowledgment of the receipt of a gift. For gifts in the amount of two hundred fifty dollars or more, the society shall provide the donor with a contemporaneous written acknowledgment; either paper or electronic document is acceptable. The acknowledgment will include:

(1) The organization's name;

(2) The name of the donor(s);

(3) An expression of gratitude;

(4) A description indicating receipt of a cash contribution and the amount of the contribution; a description of real or personal property (noncash) contributions and the value; a description of the deferred gift or insurance and the value; and/or a description of in-kind services provided;

(5) A statement that no goods or services were provided by the society in return for the contribution, if that was the case; and

(6) A description and good faith estimate of the value of goods or services, if any, that the society provided in return for the contribution.

The society will make an effort to issue the acknowledgment within thirty calendar days of the contribution, and no later than January 31st of the year following the donation. A copy of the written acknowledgment needs to be maintained by the society consistent with state records retention and Internal Revenue Code requirements.

Chapter 256-40 WAC

STATE ENVIRONMENTAL POLICY ACT COMPLIANCE

NEW SECTION

WAC 256-40-010 State Environmental Policy Act. It is the policy of eastern Washington state historical society that any project shall be accomplished in compliance with chapter 43.21C RCW, the State Environmental Policy Act (SEPA) and in accordance with chapter 197-11 WAC, guidelines for the State Environmental Policy Act implementation. Further, it is the policy of the society to provide leadership in resource conservation and environmental protection. Environmental issues will be considered in the decision-making and planning process. To this end, eastern Washington state historical society adopts by reference chapter 197-11 WAC, SEPA guidelines and all subsequent amendments thereto. In compliance with chapter 197-11 WAC, the executive director is the responsible official for carrying out this policy.

WSR 16-23-156
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-19—Filed November 22,
2016, 4:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-103.

Title of Rule and Other Identifying Information: Prior authorization processes and transparency.

Hearing Location(s): Office of Insurance Commissioner (OIC), 5000 Capitol Boulevard, Tumwater, WA 98504, on January 4, 2017, at 11:00 a.m.

Date of Intended Adoption: January 5, 2017.

Submit Written Comments to: Jim Freeburg, P.O. Box 40260, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by January 4, 2017.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by December 29, 2016, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In an effort to facilitate access to covered services, the commissioner wishes to standardize the process of prior authorization when such a program is in effect. These rules are intended to streamline the prior authorization process and to ensure it is more transparent for consumers and providers. The rules require issuers to have online systems to process prior authorizations in a reasonable time frame. The rules also provide other requirements for issuers to follow related to prior authorization.

Reasons Supporting Proposal: Rules are necessary to ensure that prior authorization processes are consistent and streamlined for both consumers and providers. The rules proposed are reasonable approaches to ensure that the process is fair and predictable.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.515, 48.43.520, 48.43.525, 48.43.530, 48.165.0301.

Statute Being Implemented: RCW 48.43.520, 48.43.525, 48.165.0301.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Freeburg, P.O. Box 40260, Olympia, WA 98504, (360) 725-7170; Implementation: Doug Hartz, P.O. Box 40255, Olympia, WA 98504, (360) 725-7214; and Enforcement: AnnaLisa Gellerman [Gellermann], P.O. Box 40255, Olympia, WA 98504, (360) 725-7037.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A) The companies affected are not small businesses as defined in chapter 19.85 RCW.

The smallest domestic insurer affected by these rules is a wholly owned subsidiary of an out-of-state firm and therefore does not meet the definition of a small business under chapter 19.85 RCW. None of the other domestic insurers meets the definition of a small business under chapter 19.85 RCW, all

either have more than fifty employees or are subsidiary members of a larger corporate family.

A) Washington state's seventeen domestic insurers (from thirteen corporate "families"), with cumulative 2015 revenues of approximately \$13.7 billion in premiums, would need to cumulatively spend at least \$41 million for their prior authorization systems to exceed minor costs definition under RCW 19.85.020 (or an average of over \$3 million). The highest estimate per corporate family that OIC received from the industry was "over \$1 million" for developing such a system.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Freeburg, P.O. Box 40255, Olympia, WA 98504, phone (360) 725-7170, e-mail jimf@oic.wa.gov.

November 22, 2016

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-0160 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination" has the same meaning as the definition of adverse benefit determination in RCW 48.43.005, and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; or

(e) A carrier's denial of an application for coverage.

(2) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(3) "Clinical review criteria" means the written screens, decision rules, medical protocols, or guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services under the auspices of the applicable ((health)) plan.

(4) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

(5) "Covered person" or "enrollee" means an individual covered by a health plan including a subscriber, policyholder, or beneficiary of a group plan.

(6) "Emergency fill" means a limited dispensed amount of medication that allows time for the processing of a preauthorization request. Emergency fill only applies to those circumstances where a patient presents at a contracted pharmacy with an immediate therapeutic need for a prescribed medication that requires a prior authorization.

(7) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(8) "Emergency services" has the meaning set forth in RCW 48.43.005.

(9) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(10) "Expedited prior authorization request" means any request by a provider or facility for approval of a service where the passage of time could seriously jeopardize the life or health of the enrollee, seriously jeopardize the enrollee's ability to regain maximum function, or, in the opinion of a provider or facility with knowledge of the enrollee's medical condition, would subject the enrollee to severe pain that cannot be adequately managed without the service that is the subject of the request.

(11) "Facility" means an institution providing health care services including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

~~((11))~~ (12) "Formulary" means a listing of drugs used within a health plan.

~~((12))~~ (13) "Grievance" has the meaning set forth in RCW 48.43.005.

~~((13))~~ (14) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

~~((14))~~ (15) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

~~((15))~~ (16) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

~~((16))~~ (17) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

~~((17))~~ (18) "Immediate therapeutic needs" means those needs where passage of time without treatment would result in imminent emergency care, hospital admission or might seriously jeopardize the life or health of the patient or others in contact with the patient.

~~((18))~~ (19) "Indian health care provider" means:

(a) The Indian Health Service, an agency operated by the U.S. Department of Health and Human Services established by the Indian Health Care Improvement Act, Section 601, 25 U.S.C. §1661;

(b) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. §450 et seq.;

(c) A tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the ISDEAA, 25 U.S.C. §450 et seq.;

(d) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. §1603(14), or tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. §1603(26), that operates a health program with funding provided in whole or

part pursuant to 25 U.S.C. §47 (commonly known as the Buy Indian Act); or

(e) An urban Indian organization that operates a health program with funds in whole or part provided by Indian Health Service under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act, Section 4(29), 25 U.S.C. §1603(29).

~~((19))~~ (20) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

~~((20))~~ (21) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

~~((21))~~ (22) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

~~((22))~~ (23) "Mental health services" means in-patient or out-patient treatment, partial hospitalization or out-patient treatment to manage or ameliorate the effects of a mental disorder listed in the *Diagnostic and Statistical Manual (DSM) IV* published by the American Psychiatric Association, excluding diagnoses and treatments for substance abuse, 291.0 through 292.9 and 303.0 through 305.9.

~~((23))~~ (24) "Network" means the group of participating providers and facilities providing health care services to a particular health plan or line of business (individual, small, or large group). A health plan network for issuers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

~~((24))~~ (25) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in *Physicians Current Procedural Terminology*, published by the American Medical Association.

~~((25))~~ (26) "Participating provider" and "participating facility" means a facility or provider who, under a contract with the health carrier or with the carrier's contractor or sub-contractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

~~((26))~~ (27) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

~~((27))~~ (28) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

~~((28))~~ (29) "Predetermination request" means a voluntary request from an enrollee or provider or facility for a carrier or its designated or contracted representative to determine if a service is a benefit, in relation to the applicable plan.

(30) "Preservice requirement" means any requirement that a carrier places on a provider or facility that may limit their ability to deliver a service that requires prior authorization. Examples include limits on the type of provider or facility delivering the service, a service that must be provided before a specific service will be authorized, site of care/place of service, and whether a provider administered medication needs to be obtained from a specialty pharmacy.

(31) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

~~((29))~~ (32) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

~~((30))~~ (33) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

~~((31))~~ (34) "Prior authorization" means a mandatory process that a carrier or its designated or contracted representative requires a provider or facility to follow to determine if a service is a benefit and meets the clinical requirements for medical necessity, appropriateness, level of care, and effectiveness in relation to the applicable plan. Prior authorization occurs before the service is delivered. For purposes of WAC 284-43-2050 and 284-43-2060, any term used by a carrier or its designated or contracted representative to describe this process is prior authorization. For example, prior authorization has also been referred to as "preauthorization," "prospective review," "preauthorization," or "precertification."

(35) "Service area" means the geographic area or areas where a specific product is issued, accepts members or enrollees, and covers provided services. A service area must be defined by the county or counties included unless, for good cause, the commissioner permits limitation of a service area by zip code. Good cause includes geographic barriers within a service area, or other conditions that make offering coverage throughout an entire county unreasonable.

~~((32))~~ (36) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005 (33) comprising from one to fifty eligible employees.

~~((33))~~ (37) "Standard prior authorization request" means any request by a provider or facility for approval of a service where the request is made in advance of the enrollee obtaining a service.

(38) "Substitute drug" means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

~~((34))~~ (39) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

SUBCHAPTER D

PRIOR AUTHORIZATION AND UTILIZATION REVIEW

AMENDATORY SECTION (Amending WSR 16-11-074, filed 5/16/16, effective 1/1/17)

WAC 284-43-2000 Health care services utilization review—Generally. (1) These definitions apply to this section:

(a) "Concurrent care review request" means any request for an extension of a previously authorized inpatient stay or a previously authorized ongoing outpatient service, e.g., physical therapy, home health, etc.

(b) (~~"Immediate review request" means any request for approval of an intervention, care or treatment where passage of time without treatment would, in the judgment of the provider, result in an imminent emergency room visit or hospital admission and deterioration of the patient's health status. Examples of situations that do not qualify under an immediate review request include, but are not limited to, situations where:~~

(i) ~~The requested service was prescheduled, was not an emergency when scheduled, and there has been no change in the patient's condition;~~

(ii) ~~The requested service is experimental or in a clinical trial;~~

(iii) ~~The request is for the convenience of the patient's schedule or physician's schedule; and~~

(iv) ~~The results of the requested service are not likely to lead to an immediate change in the patient's treatment.~~

(c) ~~"Nonurgent preservice review request" means any request for approval of care or treatment where the request is made in advance of the patient obtaining medical care or services and is not an urgent care request.~~

(~~d~~) ~~"PostsERVICE review request" means any request for approval of care or treatment that has already been received by the patient.~~

(~~e~~) ~~"Urgent care review request" means any request for approval of care or treatment where the passage of time could seriously jeopardize the life or health of the patient, seriously jeopardize the patient's ability to regain maximum function, or, in the opinion of a physician with knowledge of the patient's medical condition, would subject the patient to severe pain that cannot be adequately managed without the care or treatment that is the subject of the request.)~~

(2) Each issuer must maintain a documented utilization review program description and written clinical review criteria based on reasonable medical evidence. The program must include a method for reviewing and updating criteria. Issuers must make clinical review criteria available upon request to participating providers and facilities. An issuer need not use medical evidence or standards in its utilization review of religious nonmedical treatment or religious nonmedical nursing care.

(3) The utilization review program must meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter and must have staff who are

properly qualified, trained, supervised, and supported by explicit written clinical review criteria and review procedures.

(4) Each issuer when conducting utilization review must:

(a) Accept information from any reasonably reliable source that will assist in the certification process;

(b) Collect only the information necessary to certify the admission, procedure or treatment, length of stay, or frequency or duration of services;

(c) Not routinely require providers or facilities to numerically code diagnoses or procedures to be considered for certification, but may request such codes, if available;

(d) Not routinely request copies of medical records on all patients reviewed;

(e) Require only the section(s) of the medical record during (~~prospective review or~~) concurrent review necessary in that specific case to certify medical necessity or appropriateness of the admission or extension of stay, frequency or duration of service;

(f) For (~~prospective and~~) concurrent review, base review determinations solely on the medical information obtained by the issuer at the time of the review determination;

(g) For retrospective review, base review determinations solely on the medical information available to the (~~attending physician or order~~) provider or facility at the time the health service was provided;

(h) Not retrospectively deny coverage for emergency and nonemergency care that had prior authorization under the plan's written policies at the time the care was rendered unless the prior authorization was based upon a material misrepresentation by the provider or facility;

(i) Not retrospectively deny coverage or payment for care based upon standards or protocols not communicated to the provider or facility within a sufficient time period for the provider or facility to modify care in accordance with such standard or protocol; and

(j) Reverse its certification determination only when information provided to the issuer is materially different from that which was reasonably available at the time of the original determination.

(5) Each issuer must reimburse reasonable costs of medical record duplication for reviews.

(6) Each issuer must have written procedures to assure that reviews and second opinions are conducted in a timely manner.

(a) Review time frames must be appropriate to the severity of the (~~patient~~) enrollee condition and the urgency of the need for treatment, as documented in the review request.

(b) If the review request from the provider or facility is not accompanied by all necessary information, the issuer must tell the provider or facility what additional information is needed and the deadline for its submission. Upon the sooner of the receipt of all necessary information or the expiration of the deadline for providing information, the time frames for issuer review determination and notification must be no less favorable than federal Department of Labor standards, as follows: (~~(i) For immediate request situations, within one business day when the lack of treatment may result in an emergency visit or emergency admission;~~

~~(ii) For concurrent review requests that are also urgent care review requests, as soon as possible, taking into account the medical exigencies, and no later than twenty-four hours, provided that the request is made at least twenty-four hours prior to the expiration of previously approved period of time or number of treatments;~~

~~(iii) For urgent care review requests:~~

~~(A) The issuer must approve the request within forty-eight hours if the information provided is sufficient to approve the claim;~~

~~(B) The issuer must deny the request within forty-eight hours if the requested service is not medically necessary and the information provided is sufficient to deny the claim; or~~

~~(C) Within twenty-four hours, if the information provided is not sufficient to approve or deny the claim, the issuer must request that the provider submits additional information to make the prior authorization determination;~~

~~(D) The issuer must give the provider forty-eight hours to submit the requested information;~~

~~(E) The issuer must then approve or deny the request within forty-eight hours of the receipt of the requested additional information.~~

~~(iv) For nonurgent preservice review requests, including nonurgent concurrent review requests:~~

~~(A) The issuer must approve the request within five calendar days if the information is sufficient to approve the claim;~~

~~(B) The issuer must deny the request within five calendar days if the requested service is not medically necessary and the information provided is sufficient to deny the claim; or~~

~~(C) Within five calendar days, if the information provided is not sufficient to approve or deny the claim, the issuer must request that the provider submits additional information to make the prior authorization determination;~~

~~(D) The issuer must give the provider five calendar days to submit the requested additional information;~~

~~(E) The issuer must then approve or deny the request within four calendar days of the receipt of the additional information.~~

~~(v)) For postservice review requests, within thirty calendar days.~~

(c) Notification of the determination must be provided as follows:

(i) Information about whether a request was approved or denied must be made available to the ~~((attending physician, ordering))~~ provider~~(s)~~ or facility, and ~~((covered person))~~ enrollee. Issuers must at a minimum make the information available on their web site or from their call center.

(ii) Whenever there is an adverse determination the issuer must notify the ~~((ordering))~~ provider or facility and the ~~((covered person))~~ enrollee. The issuer must inform the parties in advance whether it will provide notification by phone, mail, fax, or other means. ~~((For an adverse determination involving an urgent care review request, the issuer may initially provide notice by phone, provided that a written or electronic notification meeting United States Department of Labor standards is furnished within seventy-two hours of the oral notification.))~~

(d) As appropriate to the type of request, notification must include the number of extended days, the next antici-

pated review point, the new total number of days or services approved, and the date of admission or onset of services.

(e) The frequency of reviews for the extension of initial determinations must be based on the severity or complexity of the ~~((patient's))~~ enrollee's condition or on necessary treatment and discharge planning activity.

(7) No issuer may penalize or threaten a provider or facility with a reduction in future payment or termination of participating provider or participating facility status because the provider or facility disputes the issuer's determination with respect to coverage or payment for health care service.

NEW SECTION

WAC 284-43-2050 Prior authorization processes. (1)

This section applies to health benefit plans as defined in RCW 48.43.005, contracts for limited health care services as defined in RCW 48.44.035, and stand-alone dental and stand-alone vision plans. This section applies to plans issued or renewed on or after January 1, 2018.

(2) A carrier or its designated or contracted representative must maintain a documented prior authorization program description and use medically acceptable clinical review criteria. A carrier or its designated or contracted representative must make determinations in accordance with the carrier's current clinical review criteria. The prior authorization program must include a method for reviewing and updating clinical review criteria. A carrier or its designated or contracted representative must not use medical evidence or standards in its prior authorization of religious nonmedical treatment or religious nonmedical nursing care.

(3) The prior authorization program must meet accreditation standards by a national accreditation organization including, but not limited to, National Committee for Quality Assurance (NCQA), Joint Commission, URAC, and AAAHC in addition to the requirements of this chapter. The prior authorization program must have staff who are properly qualified, trained, supervised, and supported by explicit written, current clinical review criteria and review procedures.

(4) A carrier or its designated or contracted representative must have a current and accurate online prior authorization system. The online system must be accessible to a participating provider and facility so that, prior to delivering a service, a provider and facility will have enough information to determine if a service is a benefit under the enrollee's plan and the information necessary to submit a complete prior authorization request. The online system must include sufficient information for a provider or facility to determine for an enrollee's plan:

(a) If a service is a benefit;

(b) If a prior authorization request is necessary;

(c) If any preservice requirements apply; and

(d) If a prior authorization request is necessary, the following information:

(i) The clinical review criteria used to evaluate the request; and

(ii) Any required documentation.

(5) In addition to other methods to process prior authorization requests, a carrier or its designated or contracted representative that requires prior authorization for services must

have an electronic process that is browser-based for a participating provider or facility to upload documentation and complete a prior authorization request.

(a) When a provider or facility makes a request for the prior authorization, the response from the carrier or its designated or contracted representative must be clear and explain if it is approved or denied and the justification and basis for the decision including the clinical review criteria for the denial. The response must give the true and actual reason in clear and simple language so that the enrollee and the provider or facility will not need to resort to additional research to understand the real reason for the action. Written notice of the decision must be communicated to the provider or facility, and the enrollee. A decision may be provided orally, but subsequent written notice must also be provided. The denial must include the department and credentials of the individual who has the authorizing authority to approve or deny the request. A denial must also include a phone number to contact the authorizing authority and a notice regarding the enrollee's appeal rights and process.

(b) A prior authorization approval notification for all services except prescription drugs must include sufficient information for the requesting provider or facility, and the enrollee, to know whether the prior authorization is for a specific provider or facility. The notification must also state if the authorized service may be delivered by an out-of-network provider or facility and if so, disclose to the enrollee the financial implications for receiving services from an out-of-network provider or facility.

(6) The carrier or its designated or contracted representative must have a method that allows an out-of-network provider or facility to request a prior authorization if prior authorization is required for an out-of-network provider or facility.

(7) The carrier or its designated or contracted representative must have a method that allows an enrollee, provider or facility to request a predetermination when provided for by the plan.

(8) A carrier or its designated or contracted representative is responsible for maintaining a system of documenting information and supporting evidence submitted by a provider or facility while requesting prior authorization. This information must be kept until the claim has been paid or the appeals process has been exhausted.

(a) Upon request of the provider or facility, a carrier or its designated or contracted representative must remit to the provider or facility written acknowledgment of receipt of each document submitted by a provider or facility during the processing of a prior authorization request.

(b) When information is transmitted telephonically, a carrier or its designated or contracted representative must provide written acknowledgment of the information communicated by the provider or facility.

(9) A carrier or its designated or contracted representative that requires prior authorization for any service must allow a provider or facility to submit a request for a prior authorization at all times, including outside normal business hours.

(10) A carrier or its designated or contracted representative must have written policies and procedures to assure that

prior authorization determinations for a participating provider or facility are made within the appropriate time frames.

(a) Time frames must be appropriate to the severity of the enrollee condition and the urgency of the need for treatment, as documented in the prior authorization request.

(b) If the request from the participating provider or facility is not accompanied by all necessary information, the carrier or its designated or contracted representative must inform the provider or facility what additional information is needed and the deadline for its submission as set forth in this section.

(11) The time frames for carrier prior authorization determination and notification to a participating provider or facility are as follows:

(a) For standard prior authorization requests:

(i) If sufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has five calendar days once the information has been received to make a determination and provide notification.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has five calendar days to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility five calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within four calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(b) For expedited prior authorization requests:

(i) If sufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier has two calendar days once the information has been received to make a determination and provide notification.

(ii) If insufficient information has been provided to a carrier or its designated or contracted representative to make a decision, the carrier or its designated or contracted representative has one calendar day to request additional information from the provider or facility.

(A) The carrier or its designated or contracted representative must give a provider or facility two calendar days to give the necessary information to the carrier or its designated or contracted representative.

(B) The carrier or its designated or contracted representative must then make a decision and give notification within two calendar days of the receipt of the information or the deadline for receiving information, whichever is sooner.

(iii) If the time frames for the approval of an expedited prior authorization are insufficient for a provider or facility to receive approval prior to the preferred delivery of the service, the prior authorization should be considered an extenuating circumstance as defined in WAC 284-43-2060.

(12) A carrier or its designated or contracted representative when conducting prior authorization must:

(a) Accept any evidence-based information from a provider or facility that will assist in the authorization process;

(b) Collect only the information necessary to authorize the service and maintain a process for the provider or facility to submit such records;

(c) If medical records are requested, require only the section(s) of the medical record necessary in that specific case to determine medical necessity or appropriateness of the service to be delivered, to include admission or extension of stay, frequency or duration of service;

(d) Base review determinations on the medical information in the enrollee's records and obtained by the carrier up to the time of the review determination; and

(e) Use the medical necessity definition stated in the enrollee's plan.

(13) A prior authorization denial is an adverse benefit determination and is subject to the appeal process.

(14) Prior authorization determinations shall expire no sooner than forty-five days from date of approval. This requirement does not supersede RCW 48.43.039.

(15) A carrier must reimburse reasonable costs of medical record duplication for reviews.

(16) A carrier is obligated to ensure compliance with prior authorization requirements, even if they use a third-party contractor. The carrier is not exempt from these requirements because it relied upon a third-party vendor or subcontracting arrangement for its prior authorization program.

(17) In limited circumstances when an enrollee has to change plans due to a carrier's market withdrawal as defined in RCW 48.43.035 (4)(d) and 48.43.038 (3)(d), the subsequent carrier or its designated or contracted representative must recognize the prior authorization of the previous carrier until the new carrier's prior authorization process has been completed and its authorized treatment plan has been initiated. The subsequent carrier or its designated or contracted representative must ensure that the enrollee receives the initial service that was previously authorized as an in-network service. Enrollees must present proof of the prior authorization.

(a) For medical services, a carrier or its designated or contracted representative must recognize a prior authorization for at least thirty days or the expiration date of the original prior authorization, whichever is greater.

(b) For pharmacy services, a carrier or its designated or contracted representative must recognize a prior authorization for the initial fill, or until the prior authorization process of the new carrier or its designated or contracted representative has been completed.

(18) Predetermination notices must clearly disclose to the enrollee and requesting provider or facility, that the determination is not a prior authorization and does not guarantee services will be covered. The notice must state "A predetermination notice is not a prior authorization and does not guarantee services will be covered." Predetermination notices must be delivered within five calendar days of receipt of the request. Predetermination notices will disclose to a provider or facility for an enrollee's plan:

- (a) If a service is a benefit;
- (b) If a prior authorization request is necessary;
- (c) If any preservice requirements apply; and

(d) If a prior authorization request is necessary or if a medical necessity review will be performed after the service has been delivered, the following information:

(i) The clinical review criteria used to evaluate the request; and

(ii) Any required documentation.

(19) Any carrier changes to a prior authorization procedure constitute a change to a provider or facility contract as the term is used in chapter 284-170 WAC and must be made as an amendment.

(20) Prior authorization for a facility-to-facility transport that requires prior authorization can be performed after the service is delivered. Authorization can only be based on information available to the carrier or its designated or contracted representative at the time of the prior authorization request.

(21) Carriers or its designated or contracted representative must have a prior authorization process that allows specialists the ability to request a prior authorization for a diagnostic or laboratory service based upon a review of medical records in advance of seeing the enrollee.

NEW SECTION

WAC 284-43-2060 Extenuating circumstances. (1)

This section applies to health benefit plans as defined in RCW 48.43.005, contracts for limited health care services as defined in RCW 48.44.035, and stand-alone dental and stand-alone vision plans. This section applies to plans issued or renewed on or after January 1, 2018.

(2) A carrier or its designated or contracted representative must allow the retrospective review of services when an extenuating circumstance prevents a participating provider or facility from obtaining a required prior authorization before a service is delivered. For purposes of this section, an extenuating circumstance means a situation where a carrier must deny a provider or facility's claim for lack of prior authorization if the services are otherwise eligible for reimbursement. A carrier's or its designated or contracted representative's extenuating circumstances policy must address, but is not limited to situations where:

(a) A provider or facility is unable to expect the need for the outpatient service in question prior to performing the service;

(b) The provider or facility is unable to identify from which carrier or its designated or contracted representative to request a prior authorization;

(c) The provider or facility does not have enough time to request a prior authorization before or while performing a service; and

(d) The enrollee is discharged from a facility and insufficient time exists for institutional or home health care services to receive approval prior to delivery of the service.

(3) A carrier or its designated or contracted representative may require a participating provider or facility to follow certain procedures in order for services to qualify as an extenuating circumstance, such as requirements for documentation or a time frame for claims submission. Claims related to an extenuating circumstance may still be reviewed for medical necessity.

(4) Requirements of WAC 284-43-2000 apply to a retrospective review that occurs because the review occurs after the service has been delivered.

(5) This section does not apply to prescription drugs services.

WSR 16-23-158
PROPOSED RULES
STATE BOARD FOR COMMUNITY
AND TECHNICAL COLLEGES

[Filed November 23, 2016, 8:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-006.

Title of Rule and Other Identifying Information: WAC 131-48-080, compliance with rules; WAC 131-48-100, eligibility to take the high school equivalency certificate; and WAC 131-48-110, eligibility for award of high school equivalency certificate.

Hearing Location(s): State Board for Community and Technical Colleges, 4th Floor, Cascade Room, on January 19, 2017, at 8:00 a.m.

Date of Intended Adoption: January 19, 2017.

Submit Written Comments to: Lou Sager, 1300 Quince Street S.E., Olympia, WA 98504, e-mail lsager@sbctc.edu, by January 16, 2017.

Assistance for Persons with Disabilities: Contact Beth Gordon by January 16, 2017, TTY (360) 704-4309.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed to accommodate our approval from the general equivalency diploma (GED) testing service to have our state's 1418 open doors program be a GED options program. The publisher of the high school equivalency tests does not allow students enrolled in any type of high school program to take the tests unless it is a GED options program. Our current statute requires any student in a high school program to be released from the high school before testing unless they meet certain criteria. The statute needs to reflect the change to allow students in 1418 open doors programs to test for the high school equivalency credential without having to be released from the school district as high school equivalency test preparation is a required component of the 1418 open doors program. Adding this criterion will allow students to remain in the program and test when they are ready instead of having to be released to take one or two tests, reenrolled to prepare for the remaining tests, and released again to finish testing.

Statutory Authority for Adoption: RCW 28B.50.912.

Statute Being Implemented: Chapter 131-48 WAC.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Staff proposes to amend WAC 131-48-100 and 131-48-110 to include students enrolled in the open doors 1418 program, as the program has been approved by the test

publisher as a state options program. The change in language has no fiscal impact.

Name of Proponent: State board for community and technical colleges, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lou Sager, 1300 Quince Street S.E., Olympia, WA 98504, (360) 704-4321.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The changes in statute do no impact small business or school district cost.

A cost-benefit analysis is not required under RCW 34.05.328. The changes in statute do not create or change any costs.

November 23, 2016

Beth J. Gordon

Executive Assistant
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-19-039, filed 9/12/13, effective 10/13/13)

WAC 131-48-100 Eligibility to take the high school equivalency test. The following individuals shall be eligible to take the high school equivalency test in official high school equivalency testing centers, provided that they are not enrolled in public, private, or home-based instruction of high school or a high school completion program at the time the test is administered:

(1) Any person age nineteen or over who has not graduated from a public or private high school.

(2) Any person between the ages of sixteen and nineteen who has not graduated from a public or private high school and who has been adjudged by a school district in accordance with rules of the state board of education to have a substantial and warranted reason for leaving the regular high school education program.

(3) Any student age sixteen or over who has completed an education center individual student program in accordance with the provisions of chapter 392-185 WAC.

(4) Any person between the ages of sixteen and twenty-one who has not graduated from public or private high school and is currently enrolled in the state options (open doors 1418) program.

(5) Any person between the ages of sixteen and nineteen who has not graduated from a public or private high school, and who has completed a program of home-based instruction in compliance with RCW 28A.225.010(4) as certified by the written and notarized statement of the parent(s) or legal guardian(s) who provided the home-based instruction.

~~((5))~~ (6) Any person who is an active member of the military, national guard, or reserves and has not received a high school diploma.

~~((6))~~ (7) Adjudicated youth under the director of prisons, jails, detention centers, parole and probation offices, and other corrections facilities while enrolled in school if so ordered by a court or officer of the court.

AMENDATORY SECTION (Amending WSR 13-19-039, filed 9/12/13, effective 10/13/13)

WAC 131-48-110 Eligibility for award of high school equivalency certificate. The high school equivalency certificate shall be awarded jointly by the state board for community and technical colleges and the superintendent of public instruction to persons who achieve the minimum proficiency level on the high school equivalency test and who meet the following:

- (1) Are residents of Washington state; and
- (2) Are nineteen years of age or older on the date of issuance; or
- (3) Have been adjudged by a district as possessing a substantial and warranted reason for leaving the regular high school education program~~((:))~~; or
- (4) Are currently enrolled in the state options (open doors 1418) program; or
- ~~(5)~~ (5) Have completed a program of home-based instruction in compliance with RCW 28A.225.010(4) and chapter 28A.220 RCW~~((:))~~; or
- ~~(6)~~ (6) Are active members of the military, national guard, or reserves~~((:))~~; or
- ~~(7)~~ (7) Are adjudicated youth under the director of prisons, jails, detention centers, parole and probation offices, and other corrections facilities and so ordered by a court or officer of the court.

WSR 16-23-159

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 23, 2016, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-15-024.

Title of Rule and Other Identifying Information: WAC 308-04-010 Requirements for checks in payment of licenses, certificates, etc.—Penalty.

Hearing Location(s): Highways-Licenses Building, Conference Room 406, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on December 27, 2016, at 2:00 p.m.

Date of Intended Adoption: December 28, 2016.

Submit Written Comments to: Stephanie Sams, P.O. Box 9020, Olympia, WA 98507, Mailstop 48006, e-mail ssams@dol.wa.gov, fax (360) 570-7048, by December 26, 2016.

Assistance for Persons with Disabilities: Contact Stephanie Sams by December 26, 2016, TTY (360) 664-0116 or (360) 902-0131.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will align the rule to the statute (RCW 46.01.230) regarding the cancelation of the license or other transaction due to a dishonored check submitted for payment. Specifically, this change states the agency shall cancel a registration, license, or permit

and may cancel any other transaction for which dishonored checks are submitted. The agency will also extend the time period for submitting payment after a dishonored check is received from fifteen days to sixty days to allow for adequate time due to USPS closures.

Reasons Supporting Proposal: This proposal aligns the WAC with the RCW and also provides our customers additional time for submitting a payment after a dishonored check is received by the department.

Statutory Authority for Adoption: RCW 46.01.110 and 43.24.023.

Statute Being Implemented: RCW 46.01.230.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Sams, Policy and Legislative Unit, (360) 902-0131; Implementation and Enforcement: Cindy Cavanagh, Accounting Services, (360) 902-7415.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule making is exempt from a small business economic impact statement because it does not impose costs on small businesses (RCW 19.85.030).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

November 23, 2016

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-01-104, filed 12/17/98, effective 1/17/99)

WAC 308-04-010 Requirements for checks in payment of licenses, certificates, etc.—Penalty. (1) All checks must be made payable to the state treasurer or department of licensing, except those checks written in payment for transactions through the department's vehicle and vessel licensing agents may be made payable to the county auditor.

(2) State warrants equal to or less than the amount of license fees due shall be accepted when tendered for payment of a department of licensing transaction. If the warrant is less than the amount due, the applicant shall pay the difference by cash, check, or money order.

(3) Checks should be written for the exact amount due and the purpose for which the check is intended should be noted on its face. Overpayments for vehicle transactions will not be accepted.

(4) The drawer's name (licensee) and address should appear upon each check. All dishonored (DHC) checks will be redeposited once. If they fail to clear at the time of the second deposit, the following action will be taken:

(a) The drawer (licensee) will be sent a letter advising him or her that the registration, license ~~((or))~~, or permit shall be canceled and any other transaction ((for which the DHC had been submitted will)) may be canceled for which the DHC had been submitted unless a money order, cash, or cashier's check for the full amount due, including the han-

ding fee, is received within (~~fifteen~~) sixty days of the date of this letter.

(b) The failure to pay a license fee or tax due after notice of dishonor has been given will result in cancellation of any service, license, permit, or registration provided.

(5) Checks written on foreign banks and foreign postal money orders (outside of the United States) shall be payable in U.S. dollars.

WSR 16-23-161

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 16-06—Filed November 23, 2016, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-15-048.

Title of Rule and Other Identifying Information: Chapter 173-305 WAC, Hazardous waste fee regulation, this chapter establishes regulations for fees associated with the use of hazardous substances and the generation of hazardous waste.

Hearing Location(s): Lacey, Department of Ecology, Auditorium, 300 Desmond Drive, Olympia, WA 98503, in-person combined with a webinar on January 4, 2017, at 10:00 a.m.; presentation, question and answer session followed by the formal public hearing.

Ecology is holding this hearing via webinar and in-person. Webinars are an online meeting forum that you can attend from any computer using internet access.

To join the webinar go to the following link for more information and instructions http://www.ecy.wa.gov/programs/hwtr/laws_rules/HWFee/1606inv.html.

Date of Intended Adoption: April 5, 2017.

Submit Written Comments to: John Ridgway, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail hwtrulemaking@ecy.wa.gov, fax (360) 407-6715, by January 23, 2017.

Assistance for Persons with Disabilities: Contact ecology at (360) 407-6700, to request ADA accommodation including materials in a format for the visually impaired. Persons with impaired hearing may call Washington relay service at 711. Persons with speech disability may call TTY 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will focus on:

- Additional exclusions related to the hazardous waste planning fee calculation found in WAC 173-305-220.
- Update the "price deflator" definition to clarify how the fee is adjusted annually for inflation.

Ecology is doing this rule making to align the rule with existing fee calculation practices, which are consistent with the hazardous waste and toxics reduction goals and purposes of chapter 70.95C RCW.

Reasons Supporting Proposal: See Purpose above for this information.

Statutory Authority for Adoption: RCW 70.95E.030 ... , The department shall adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties

Statute Being Implemented: Chapter 70.95E RCW.

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

Name of Proponent: Department of ecology, public [governmental].

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: John Ridgway, Department of Ecology, Olympia, Washington, (360) 407-6713.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Terminology: The terms "hazardous waste" and "dangerous waste" are interchangeable for the purposes of this report.

Executive Summary: It is important to note that the proposed rule would codify current practice, which is not part of the baseline under the Regulatory Fairness Act (RFA) (chapter 19.85 RCW).

Based on research and analysis required by RFA - RCW 19.85.070 - ecology has determined the proposed rule (chapter 173-305 WAC, Hazardous waste fee regulation) would have a *positively* disproportionate impact on small business, as compared to the baseline of the existing rule. This means, compared to the language of the existing rule, the proposed rule would reduce costs per employee for a typical small business, while leaving costs per employee unchanged for the typical largest ten percent of businesses it covers. Therefore, ecology did not include disproportion-minimizing features in the rule.

A small business is defined by RFA as having fifty or fewer employees. Estimated costs are determined as compared to the existing regulatory environment, the way hazardous waste fees would be regulated in the absence of the rule amendments, based solely on the rule language. The small business economic impact statement (SBEIS) only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for nonprofit or government agencies.

Chapter 1: Introduction and Background:

Based on research and analysis required by RFA - RCW 19.85.070 - ecology has determined the proposed rule (chapter 173-305 WAC, Hazardous waste fee regulation) would have a *positively* disproportionate impact on small business, as compared to the baseline of the existing rule. This means, compared to the language of the existing rule, the proposed rule would reduce costs per employee for a typical small business, while leaving costs per employee unchanged for the typical largest ten percent of businesses it covers. Therefore, ecology did not include disproportion-minimizing features in the rule.

It is important to note that the proposed rule would not change fee calculations from current practice, which is not part of the baseline under RFA.

This SBEIS presents the:

- Background for the analysis of impacts on small business relative to other businesses.
- Results of the analysis.
- Cost-mitigating action taken by ecology, if applicable.
- Expected net impact on jobs statewide.

This document is intended to be read with the associated cost-benefit analysis (ecology publication #16-04-025).

A small business is defined by RFA as having fifty or fewer employees. Estimated costs are determined as compared to the existing regulatory environment, the way hazardous waste fees would be regulated in the absence of the rule amendments, based solely on the rule language. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for nonprofit or government agencies.

The existing regulatory environment and rule language are called the "baseline" in this document. It includes only existing laws and rules at federal and state levels. It is important to note that the proposed rule would codify current practice.

1.1 Description of the proposed rule: The proposed rule amendments make the following changes not required by other laws or rules:

- Updating the definition of "price deflator" to annually adjust the fee for inflation. The price deflator clarifies which figures to use by the United States Department of Commerce, Bureau of Economic Analysis (BEA), relative to state and local government gross domestic products.
- Adding two exclusions to the calculation of dangerous waste used as the basis for fee calculations:
 - o Dangerous waste treated on-site by the generator, as regulated by the dangerous waste regulations (WAC 173-303-170 (3)(b) and (c)).
 - o Nonrecurrent dangerous waste as reported under the dangerous waste regulations (WAC 173-303-060(5)).

1.2 Reasons for the proposed rule:

1.2.1 Price deflator: The hazardous waste fee regulation specifies the price deflator ecology must use when adjusting for inflation. The price deflator directs how to adjust for inflation for the total amount ecology can annually collect through the administration of this fee. This is an early step in order to later calculate individual fees. The rule's original "Implicit Price Deflator for gross *National* Product" is no longer published by the United States BEA.

Ecology is proposing to use BEA's updated "Implicit Price Deflator for gross *Domestic* Product." This is the measure currently reported on the table taken from the national income and product accounts reported by BEA.

The proposed rule also provides an option if the state and local measure is unavailable. This proposal also helps avoid the need for similar rule making if there is another BEA name change.

If adopted, this newer price deflator definition will not change how inflation calculations are carried out. Ever since the "*National*" price deflator went away, ecology has suc-

cessfully used the "*Domestic*" price deflator as the best available replacement. In effect, there will be no change to fee calculations compared to prior years.

1.2.2 Fee calculation exclusions: Ecology has been collecting hazardous waste fees since 1983. In 1989, an initiative passed by the people of Washington encouraged the legislature to revise the hazardous waste fees to provide an incentive for hazardous waste reduction and recycling (RCW 70.105A.035). As a result, chapter 70.95E RCW was passed by the legislature in 1990. In that statute, the legislature directed the department of ecology to adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties. The result was chapter 173-305 WAC. Ecology's policies and information management capabilities have changed since 1990 when chapter 173-305 WAC was promulgated. These changes led ecology to modify the way they determined the types of waste subject to the fee.

- *Hazardous waste generators that were treating their waste on site.* In one case, a new method of hazardous waste management, "treating waste on site" became a legal option for planners. Treating waste on site reduced the amount of waste that would otherwise require planning and thus treated waste on site was excluded from the fee calculations. The post treatment-on-site waste amounts were used in the fee calculations, recognizing that these wastes still need to be planned for.
- *Hazardous waste generators that had nonrecurrent hazardous waste generation.* When the rules were originally promulgated, there was no way to distinguish nonrecurrent wastes from recurrent wastes in the annual waste management reports that were submitted by businesses. Therefore both recurrent and nonrecurrent waste streams were treated the same. It became clear that "nonrecurrent" waste was not routine and therefore not easy to plan for. Once information management methods for tracking nonrecurrent wastes became available, these wastes were excluded from the calculations.

This rule making proposes to explicitly add the above wastes as exclusions to the calculation of hazardous waste pounds used in the fee calculation. This will clearly maintain these exclusions in future fee calculations, and bring the rule into line with current practice.

It is important to note that these proposals reflect the status quo of what has been carried out for many years by ecology. If adopted, there will be no change to those specific fee calculation procedures.

1.3 Regulatory baseline: The baseline for our analyses generally consist of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this proposed rule making, the baseline includes:

- The existing rule, chapter 173-305 WAC, the hazardous waste fee regulation.
- The direct authorizing statute, chapter 70.95E RCW, Hazardous waste fees.

- Associated hazardous waste regulations, including, but not limited to:
 - o Chapter 70.95C RCW, Waste reduction.
 - o Chapter 70.105 RCW, Hazardous waste management.
 - o Chapter 70.105A RCW, Hazardous waste fees (remaining directive that fees promote recycling and reduction).
 - o Chapter 173-303 WAC, Dangerous waste regulations.
 - o Chapter 173-307 WAC, Pollution prevention plans.

It is important to note that the proposed rule would codify current practice. Under RFA and for this analysis, current practice is not included in the baseline.

The hazardous waste fee funds "implementation of RCW 70.95C.200 and 70.95C.040. These fees are to be used by the department, subject to appropriation, for plan review, technical assistance to facilities that are required to prepare plans, other activities related to plan development and implementation, and associated indirect costs."¹ The fee is based on a facility's pounds of dangerous waste and pounds of emissions per WAC 173-305-220.

¹ RCW 70.95.030.

Ecology must first calculate the total fees that they can collect based on the inflation-adjusted total from the previous year, then allocate individual fee burden based on the amounts of emissions, hazardous waste and extremely hazardous waste generated. The burden is affected by a 10-to-1 ratio for extremely hazardous waste versus hazardous waste. The parameters set on the fee by law (chapter 70.95E RCW) include:²

² Bullets 1, 2, and 4 are in 1990-dollars, and are annually adjusted for inflation.

- The total fees collected under this subsection shall not exceed the department's costs of implementing RCW 70.95C.200 and 70.95C.040 and shall not exceed \$1 million per year.
- The annual fee for a facility shall not exceed \$10 thousand per year.
- Any facility that generates less than two thousand six hundred forty pounds of hazardous waste per waste generation site in the previous calendar year shall be exempt from the fee imposed by this section.
- The annual fee for a facility generating at least two thousand six hundred forty pounds but not more than four thousand pounds of hazardous waste per waste generation site in the previous calendar year shall not exceed fifty dollars.
- A person that develops a plan covering more than one interrelated facility as provided for in RCW 70.95C.200 shall be assessed fees only for the number of plans prepared.
- The department shall adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties.
- Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for

beneficial use, shall not be used in the calculations of hazardous waste generated for purposes of this section.

Chapter 2: Compliance Costs: It is important to note that the proposed rule would codify current practice, which is not part of the baseline under RFA (chapter 19.85 RCW).

Every year, individual fees are calculated based on the most current year's emissions and hazardous waste generated as reported by individual planners. It's expected that emissions and amounts of hazardous waste generated change each year, both for planners and in total.

The proposed rule reallocates the aggregate fee across hazardous waste planners, as compared to the baseline rule language. This means some fees would be higher under the proposed rule than under the baseline existing rule, while others would be lower. However, the proposed exclusions have been in practice for many years. So, if the proposed exclusions are adopted, there would be no real change from existing fee practice.

Per the baseline and limitations set by the authorizing statute (see Chapter 1), the aggregate fee (total across all parties paying the fee) charged is not affected by the proposed rule. Under both the baseline and proposed rule, the total fees collected shall not exceed the maximum fee allowed by the authorizing statute (chapter 70.95E RCW).

Ecology calculated and compared the fees for existing planners and potential new planners (who currently pay no fee) based on:

- Only the exclusions to the fee calculation listed in the existing baseline rule language.
- The additional exclusions to the fee calculation listed in the proposed rule language.

We found the following changes to fees across five hundred forty-three of the roughly six hundred thirty existing or potential new fee-paying planners, as compared to the baseline.

Table 1: Number of planners with fee increases, decreases, or no change compared to the baseline rule:³

³ Comparison is an estimate based on 2015 dangerous waste reports and the 2014 toxics release inventory.

Fee decreases	133
Fee increases	309
No change	101
TOTAL	543

The ranges of fee change are broad, with extremes of fees decreasing \$11 - \$20,063, or increasing \$4 - \$5,351. Only a few planners would experience the largest fee changes, as compared to the baseline language. More representative values for a typical planner are:

- Decreases: \$1,861 average; \$444 median.
- Increases: \$801 average; \$316 median.

Businesses that would be charged higher fees could experience reduced sales or revenues if the fee changes would significantly affect the prices of the goods they sell.

Similarly, businesses that would be charged lower fees could experience increased sales or revenues if the fee changes would significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether fees significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence of each firm on market prices, as well as the relative responsiveness of market demand to price changes.

Chapter 3: Quantification of Cost Ratios: Ecology began quantification of cost ratios of fee change (compared to the baseline - the existing rule language) relative to employment by identifying small and large businesses. To determine employment at fee-paying planner businesses, ecology used a representative random sample (ninety-nine) of planners in Washington state. We collected employment information from available state records at the employment security department, as well as company web sites, reports to shareholders, and federal filings. This process also identified whether planners were not-for-profit or public entities. Because many employment values were ranges, we used the low-end employment number to maintain conservative assumptions about whether businesses were small or large.

Table 2: Proportions of planner businesses by size:

Business Size	Percentage
Small (50 or fewer employees)	17.2%
Large (greater than 50 employees)	72.7%
Not-for-profit or government	10.1%
Total	100.0%

The average employment at a small business was twenty employees, while it was seven hundred forty-six thousand five hundred at the largest ten percent of businesses.⁴

⁴ Employment data is gathered from data reported to the state, business web sites, reports, and filings, and third-party reporting sites.

We then used the employment information for the representative sample, as well as the estimated fee change under the proposed rule as compared to the baseline, to estimate the average cost per employee at the sampled businesses. We found that on average the proposed rule:

- Reduces fees for small businesses (average reduction of over \$21 per employee).
- Leaves fees relatively unchanged for the largest ten percent of businesses (average fee change of 0.35 cents per employee).

The proposed rule therefore does disproportionately impact small businesses, but does so positively in comparison to its impact on the largest ten percent of businesses. Recall that this is as compared to the baseline of the existing rule language, and is not likely to be reflected in practice. This is because the proposed rule would codify existing practice.

Chapter 4: Action Taken to Reduce Small Business Impacts: The proposed rule would have a *positive* disproportionate impact on small businesses, reducing fees by over \$21

per employee, as compared to near \$0 change per employee for the largest ten percent of businesses. This is as compared to the baseline existing rule language; actual change from current practice would be zero, as the proposed rule would codify current practice. Ecology, therefore, did not add elements to the proposed rule that reduce disproportionate costs to small businesses.

Chapter 5: Small Business and Government Involvement: Ecology involved small businesses and local government in its development of the proposed rule, using:

- An informal public meeting in August 2016.
- An informal public webinar in September 2016.
- The hazardous waste fee rule listserv.

The likely interested audiences included:

- Hazardous waste planning fee payers.
- Local, state, and tribal governments.
- Environmental organizations.
- Business associations.

Webinar attendees included identified representatives from:

- Intel Corporation
- Columbia Machine, Inc.
- ConAgra Foods Lamb Weston
- Cordant Health Solutions
- General Dynamics NASSCO-Bremerton
- Abernathy FTC
- City of Spokane
- Sierra Pacific Industries
- Trident Seafoods
- AvtechTyee
- Rainier Ballistics
- Seattle City Light
- Columbia Machine, Inc.
- Washington State Dental Association
- Fiber-Tech Industries
- Interfor
- City of Kennewick
- Cellnetix
- Boeing
- Bonneville Power Administration
- WA Department of Corrections
- Allweather Wood
- Lake Union Drydock Co.

In-person public meeting attendees did not identify themselves as representing an organization or business.

Chapter 6: North American Industry Classification System (NAICS) Codes of Impacted Industries: The proposed rule covers planners in a variety of industries. Based on a representative sample of planners in Washington state, ecology identified the following likely impacted NAICS codes.

Table 3: NAICS codes of likely affected industries:

2212	3255	3312	3329	3366	4244	4511	7139
2389	3259	3313	3331	3371	4246	4521	8111
3211	3261	3323	3344	3391	4412	4861	8114

3222	3262	3324	3345	3399	4441	4931	
3253	3272	3327	3364	4237	4461	5619	

Chapter 7: Impact on Jobs: Ecology used the Washington state office of financial management's (OFM) 2007 Washington input-output model⁵ to estimate the impact of the rule on jobs in the state. The model accounts for interindustry impacts and spending multipliers of earned income and changes in output.

⁵ See the Washington state OFM's site for more information on the input-output model <http://www.ofm.wa.gov/economy/io/2002/default.asp>

The proposed rule would result in planners in various industries paying increased or decreased fees to the government sector, as compared to the baseline existing rule language. As the OFM model does not include the general public sector, we treated these increased or reduced fee expenditures as increased or decreased contribution to producing output, without transfers of money to another sector.

We based our jobs calculation on the same representative sample used to calculate costs per employee, for which we had NAICS codes and fee changes under the proposed rule as compared to the baseline, as well as the same conservative assumption that for businesses with a range of reported employees, the low-end number of employees determines whether we identify them as small or large businesses. **The OFM model determined that the proposed rule is not likely to affect the total number of jobs in the state.** Moreover, the proposed rule would codify existing practice, so planners would not see real changes in fees as a result of the proposed rule.

A copy of the statement may be obtained by contacting John Ridgway, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6713, fax (360) 407-6715, e-mail john.ridgway@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting John Ridgway, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6713, fax (360) 407-6715, e-mail john.ridgway@ecy.wa.gov.

November 23, 2016
 Polly Zehm
 Deputy Director

AMENDATORY SECTION (Amending WSR 00-16-103, filed 8/1/00, effective 9/1/00)

WAC 173-305-020 Definitions. Any terms not specifically defined in this section, for the purposes of this chapter, have the same meaning as given in WAC 173-303-040. The following terms are defined for the purposes of this chapter:

- (1) "Additional fee" means the annual fee imposed under chapter 70.95E RCW against hazardous generators and hazardous substance users required to prepare plans;
- (2) "Base fee" means the annual fee imposed under chapter 70.95E RCW against hazardous waste generators doing business in the state of Washington;
- (3) "Business activities" means activities of any person who is "engaging in business" as the term is defined in chapter 82.04 RCW. Specifically, "engaging in business" means

commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidates thereof hold themselves out to the public as conducting such business;

(4) "Dangerous waste" means any discarded, useless, unwanted, or abandoned nonradioactive substances including, but not limited to, certain pesticides, or any residues or containers of those kinds of substances that are disposed of in a quantity or concentration that would pose a substantial present or potential hazard to human health, wildlife, or the environment because those wastes or constituents or combinations of those kinds of wastes:

(a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

"Dangerous wastes" specifically includes those wastes designated as dangerous by chapter 173-303 WAC;

(5) "Department" means the department of ecology;

(6) "Emissions" means the substances released to the environment that must be reported under toxic chemical release reporting, 40 C.F.R. Part 372;

(7) "EPA/state identification number" means the number assigned by the environmental protection agency (EPA) or by the department of ecology to each generator or transporter or both, and to each treatment facility, or storage facility, or disposal facility, or a treatment, storage, and disposal facility;

(8) "Extremely hazardous waste" means any dangerous waste that:

(a) Will persist in a hazardous form for several years at a disposal site and which, in its persistent form:

(i) Presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of man or wildlife; and

(ii) Is highly toxic to man and wildlife;

(b) If disposed of at a disposal site in quantities that would present an extreme hazard to man or the environment.

"Extremely hazardous waste" specifically includes those wastes designated as extremely hazardous by chapter 173-303 WAC;

(9) "Facility" means any geographical area that has been assigned an EPA/state identification number or in the case of a hazardous substance user, means all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites and owned or operated by the same person;

(10) "Generate" means any act or process that produces hazardous waste or first causes a hazardous waste to become subject to regulation;

(11) "Hazardous waste" includes all dangerous and extremely hazardous wastes but, for the purposes of this chapter, excludes all radioactive wastes or substances composed of both radioactive and hazardous components;

(12) "Hazardous waste generator" means all persons whose primary business activities are identified by the department to generate any quantity of hazardous waste in the calendar year for which the fee is imposed.

(13) "Interrelated facility" means multiple facilities owned or operated by the same person;

(14) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal government;

(15) "Plan" means the plan provided for in RCW 70.95C.200;

(16) "Price deflator" means the figures reported by the United States Department of Commerce Bureau of Economic Analysis((;)) on the table for "implicit price deflator for gross ((national)) domestic product ((for government purchases of goods and services for state and local government))." The department must use a price deflator for "State and Local Government." If a "State and Local Government" figure is not included on the table, the department must use a price deflator figure applicable to general government.

(17) "Primary business activity" means a business activity that accounts for more than fifty percent of a business' total gross receipts or in the case of more than two business activities, the activity which has the largest gross receipts. Where a business engages in multiple activities and one or more of those activities generate hazardous waste, the gross receipts from all waste generating activities will be combined to determine their ratio to the total gross receipts of the business.

(18) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include:

- (a) Use constituting disposal;
- (b) Incineration; or
- (c) Use as a fuel.

(19) "Substantially similar processes" means processes that are essentially interchangeable, inasmuch as they use similar equipment and materials and produce similar products or services and generate similar wastes.

(20) "Waste generation site" means any geographical area that has been assigned an EPA/state identification number.

AMENDATORY SECTION (Amending WSR 00-16-103, filed 8/1/00, effective 9/1/00)

WAC 173-305-220 Hazardous waste planning fee. (1)

The department shall calculate the adjusted fees, annual fee, and maximum total fees using the formula in subsection (3) of this section. The formula uses a risk factor of one for dangerous waste and emissions, and a multiplication factor of ten for extremely hazardous waste. For purposes of this section, hazardous waste reported on the annual dangerous waste generator report as having been either recycled on-site or recycled for beneficial use offsite, including initial amounts of hazardous substances introduced into a process and subsequently recycled for beneficial use, may not be used in the calculation of hazardous waste generated. A facility may petition the director to exclude hazardous wastes recycled for beneficial use even if they were not reported as such on the annual dangerous waste generator report. Documentation from the hazardous waste handling facility that the hazardous

waste was recycled for beneficial use must be submitted along with the petition.

(2) Fees in subsection (3) of this section are based on the following definitions:

(Note: The terms "dangerous waste" and "extremely hazardous waste" as used in this subsection use the same basic definition as in WAC 173-305-020, but are modified as follows for the fee calculation only.)

(a) Dangerous waste is the number of pounds of dangerous waste reported that are not recycled for beneficial use, calculated so that the following wastes are excluded:

(i) Wastewater discharged under permit by rule under WAC 173-303-802 ~~((is excluded.))~~; or

(ii) Dangerous waste that is treated on-site by the generator according to WAC 173-303-170 (3)(b) and (c); or

(iii) Nonrecurrent dangerous waste as reported on the annual dangerous waste generator report required under WAC 173-303-060(5).

(b) Emissions is the number of pounds of emission reported under Toxic Chemical Release Reporting, 40 C.F.R. Part 372, by a company. If emissions are reported in ranges, the middle value of the reported range will be used in the calculation.

(c) Extremely hazardous waste is the number of pounds of extremely hazardous waste reported that are not recycled for beneficial use, calculated so that the following wastes are excluded:

(i) Wastewater discharged under permit by rule under WAC 173-303-802 ~~((is excluded.~~

~~The price deflator is the "Implicit price deflator for gross national product for government purchases of goods and services for state and local government."))~~; or

(ii) Extremely hazardous waste that is treated on-site by the generator according to WAC 173-303-170 (3)(b) and (c); or

(iii) Nonrecurrent extremely hazardous waste as reported on the annual dangerous waste generator report required under WAC 173-303-060(5).

The total risk pounds for a facility or set of interrelated facilities is equal to ten times the number of pounds of extremely hazardous waste generated, plus the number of pounds of dangerous waste generated, plus the number of pounds of emission reported by that facility.

(3) The annual fee for a facility or set of interrelated facilities is equal to the rate per risk pound times the total risk pounds. The rate for the risk pounds must be calculated by the department so that the maximum total fee in (a) of this subsection can be obtained. The annual fee for each facility or set of interrelated facilities is subject to the limitations in (b) and (c) of this subsection.

(a) The maximum total fees collected must be determined based on the maximum total fee for the previous year, multiplied by the most current price deflator, and divided by the price deflator used in the numerator for the previous year. The price deflator used in the denominator for the first adjustment is the second quarter price deflator for 1990. The maximum total fees for 1990 must be one million dollars.

(b) The maximum fee for any facility or interrelated facility must be determined based on the maximum total fee for the previous year, multiplied by the most current price

deflator, and divided by the price deflator used in the numerator for the previous year. The price deflator used in the denominator for the first adjustment is the second quarter price deflator for 1990. The maximum annual fee for 1990 must be ten thousand dollars.

(c) The maximum annual fee for a generator who generates between two thousand six hundred forty and four thousand pounds of dangerous and extremely hazardous waste must be determined based on the maximum total annual fee for the previous year, multiplied by the most current price deflator, and divided by the price deflator used in the numerator for the previous year. The price deflator used in the denominator for the first adjustment is the second quarter price deflator for 1990. The maximum annual fee for 1990 must be fifty dollars.

WSR 16-23-165
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed November 23, 2016, 10:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-042.

Title of Rule and Other Identifying Information: Chapter 308-108 WAC, Driver training schools; and chapter 308-110 WAC, Administration of knowledge and skills testing by driver training schools.

Hearing Location(s): Department of Licensing, Highways-Licenses Building, 1125 Washington Street S.E., Room 413, Olympia, WA 98504, on January 12, 2017, at 9:30 a.m.

Date of Intended Adoption: January 13, 2017.

Submit Written Comments to: Sirena Walters, P.O. Box 9027, Olympia, WA 98507, e-mail TSE@dol.wa.gov, fax (360) 570-4976, by January 11, 2017.

Assistance for Persons with Disabilities: Contact driver training schools (DTS) by January 11, 2017, TTY (360) 664-0116 or (360) 664-6692.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule changes will update current rules for DTS to clarify compliance procedures and the requirements for teaching and administering examinations for traffic safety education.

Reasons Supporting Proposal: Improve compliance and understanding of requirements for our applicants and licensees.

Statutory Authority for Adoption: Chapter 46.82 RCW and RCW 46.02.110.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Loni Miller, 405 Black Lake Boulevard South, Olympia, WA 98502, (360) 664-6692; Implementation: Sirena Walters, 405 Black Lake Boulevard South, Olympia, WA 98502, (360) 664-6692; and Enforcement: Derek Goudriaan, 405 Black

Lake Boulevard South, Olympia, WA 98502, (360) 664-6692.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is exempt per RCW 19.85.030 (1)(a) since it will impose only minor costs of less than \$100 to businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt from this requirement under RCW 34.05.328 (5)(a).

November 23, 2016

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-020 Definitions. The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Behind the wheel instruction" means that portion of a traffic safety education course that consists of on-street, dual-controlled vehicle operation or similar instruction given under simulated conditions that has been approved by the director.

(2) "Branch office" or "branch classroom" means a facility within a thirty-five mile radius of a driver training school's established place of business, except where the thirty-five mile radius requirement has been waived or extended by the department as provided by RCW 46.82.360 (6)(c), that has been approved by the department for use by the driver training school.

(3) "Continuing professional development" or "continuing education" means education or training intended to maintain and improve a driver training school instructor's practice and instruction of driver training. This includes any department approved course that benefits the driving instructor in the driving school environment.

(4) "Engage in a course of instruction" means to enroll in, schedule, collect a fee for, or sign an application for an instruction permit in order to attend or take part in a driver training education course.

~~((4))~~ (5) "Inactive instructor" means an instructor with a valid Washington instructor's license who is no longer employed by or otherwise associated with a licensed driver training school.

~~((5))~~ (6) "Instructor-trainer" means a currently licensed instructor who is training traffic safety education instructors and who has not less than:

(a) One thousand hours of experience in providing traffic safety education in the past year;

(b) Five years of previous experience in providing traffic safety education; or

(c) One thousand hours or five years experience in the field of traffic safety and proof of training acceptable to the director in how to teach and train others, and not less than three hundred hours of previous experience in training others.

~~((6))~~ (7) "Records" means all documents, papers and reports required to own a driver training school~~((7))~~ including, but not limited to:

(a) Vehicle registration, title, insurance policy, and maintenance information;

(b) Business financial documents, such as franchise agreements, corporate documents, bank records, partnership agreements, lease agreements, and purchase and sale agreements; ~~((and))~~

(c) Student classroom and behind-the-wheel instruction reports; and

(d) Course comprehensive exam score sheets, policies, and attendance reports.

~~((7))~~ (8) "Student" means any person enrolled in an approved driver training education course ((who is)). A student may enroll at any age; however the student must be at least fifteen years of age on or before the first day of class of the driver's education course.

(9) "Driver training school" means a department-approved school whose primary function is providing driver's education. The school must have a department-approved instruction vehicle, and meet all driver training school statutory and rule requirements.

(10) "Fingerprint card" means a set of fingerprints, obtained through a manual or electronic process, by an approved vendor or agency, for the purpose of conducting a background check.

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-025 Fees. The following fees shall be charged by the driver services division, department of licensing:

Title of Fee	Fee
Driver training school license original application	\$500.00
Driver training school license renewal application	250.00
Driver training school license ((transfer)) <u>change in ownership</u>	500.00
Branch office or branch classroom original application	250.00
Branch office or branch classroom renewal application	125.00
Instructor's license original application	125.00
Instructor's license renewal application	100.00
Duplicate license	10.00
((Knowledge and/)) <u>Instructor knowledge or skill examination</u>	25.00

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-070 Background check and fingerprint check. An instructor, owner, or other person affiliated with a school who ~~((has))~~ have unsupervised contact with students must complete a background check through the Washington state patrol criminal identification system and

through the federal bureau of investigation, including a fingerprint check through the process identified by the department, as required by RCW 46.82.325(1).

(1) An applicant for an instructor's license must complete the check at the time of initial application or, for a currently licensed instructor who has not completed such check within the past five years, at the time of the next application for a license renewal.

(2) An owner must complete the check at the time of initial application for a driver training school license or, for an owner of a currently licensed school who has not completed such check within the past five years, at the time of the next application for a license renewal.

(3) A person affiliated with a school who ~~((has))~~ have unsupervised contact with students must complete the check at the time of initial affiliation with the school or, for a person who is currently affiliated with a school who has not completed such check within the past five years, within the sixty-days prior to the next application for a license renewal for the school. A person who must complete the check under this subsection at the time of initial affiliation with a school may begin duties following the department's notice that it has received an acceptable local criminal background check through the Washington state patrol criminal identification system, pending the acceptable outcome of the fingerprint check using the fingerprint card.

(4) For the purpose of chapter 46.82 RCW, a person affiliated with a school is considered to be a person directly or indirectly interested in the driver training school's business.

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-080 Instructor's license—Application. (1) To ensure that an applicant or instructor meets the conditions set out in RCW 46.82.330 (2)(a), the department shall review the complete abstract of driving record and the background checks for all ~~((instructor's))~~ new and renewal instructor license applicants ~~((and licensed instructors))~~. For this purpose:

(a) A moving traffic violation is an offense listed as a moving violation in WAC 308-104-160. The department will determine the number of moving traffic violations received by an applicant within a given time period based on the date(s) that the violation(s) occurred.

(b) A drug or alcohol-related traffic violation or a drug or alcohol related incident will be deemed to have occurred if it resulted in:

(i) A conviction ~~((or)),~~ finding, or deferred prosecution that a traffic infraction was committed for violation of RCW 46.61.502, 46.61.503, 46.61.504, 46.61.519, 46.61.5195, 46.61.520 (1)(a), 46.61.522 (1)(b), ~~((or))~~ 46.61.5249, or 66.44.270 or a substantially similar law, administrative regulation, local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state;

(ii) An administrative action imposed under RCW 46.20.3101;

(iii) An administrative action imposed under RCW 46.25.090 (1)(a), (b), or (e); or

(iv) Entry into a deferred prosecution agreement for an alcohol-dependency based case.

(2) The applicant for an instructor's license ((applicant)) must submit satisfactory evidence of completion of a course of instruction as approved by the director in the training of drivers at the time of initial application.

(3) ~~((For instructor's licenses that expire on or after July 1, 2007,))~~ Each application for renewal of an instructor's license must be accompanied by proof of no less than ((eight)) sixteen hours of continuing professional development as approved by the director.

(4) Application for initial or renewal of an instructor's license is not complete until the applicant passes any examination requirement for licensure under RCW 46.82.320(1) or 46.82.330 (2)(e).

(5) In the event the licensee's instructor license expires, the licensee must submit a new application, meet the current educational requirements for an initial instructor license, and pay the appropriate fees.

(6) An instructor application is valid for ninety days from the date the department receives the application. If, through no fault of the department, the application is not completed within ninety days, the application will be withdrawn by the department. A new application and fees must be submitted if the applicant wishes to continue applying for a license.

(7) If an instructor applicant has failed the instructor's examination, including either the written or skills exams, a combined total of three times within twelve months, the instructor applicant must wait a minimum of six months from the date of the last failed examination to reapply for an instructor's license. The new application must meet all of the conditions and fee requirements of the department at the time the new application is submitted. An applicant must wait a minimum of forty-eight hours before retaking any portion of the instructor's examination.

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-090 Instructing instructors in the training of drivers. (1) The course of instruction approved by the director in the training of drivers required under RCW 46.82.330 (2)(d) shall include instruction in driver education classroom methods and principles that prepare an instructor to provide traffic safety education as described in these rules and in state law.

(2) To ensure the quality of the training given, the instruction course must:

(a) Be provided by, and under the direct supervision of:

(i) An institution of higher learning accredited by the Northwest Association of Schools and Colleges or by an accrediting association recognized by the higher education board;

(ii) A licensed private vocational school as that term is defined by RCW 28C.10.020(7); or

(iii) An instructor-trainer.

(b) Be not less than one hundred hours in total length and consist of:

(i) Not less than forty hours of instruction in behind the wheel teaching methods;

(ii) Not less than twenty hours of supervised practice in behind the wheel teaching of driving techniques;

(iii) Not less than forty hours total of instruction that includes all of the following areas:

(A) Education and special education;

(B) Driver education teacher, instructor, or trainer skills training;

(C) Classroom teaching techniques;

(D) Communication skills;

(E) Teaching the concepts of driving and traffic safety to others;

(F) Educational methods, theories and concepts in teaching a driver education course, and knowledge of all aspects of the driving task;

(G) Developing instructional materials and activities that aid student learning and performance;

(H) Defining and describing the nature of the driving task on public highways;

(I) Establishing and maintaining classroom organization;

(J) Managing enrollment, student scheduling, student records, and required reports; and

(K) Planning a course of student instruction with outlines, lesson plans, and student performance evaluation tools.

~~(3) ((The department must approve an instructor training course curriculum before use by an instructor trainer.))~~ Instructor training curriculum must meet all department standards of delivery, content requirements, and must be approved by the department prior to use. A copy of the curriculum showing department approval and last revision date must be kept with the school's records.

(4) Any revision to an approved instructor training course curriculum used by an instructor-trainer must be submitted for review and ~~((approval))~~ approved by the department ~~((no less than thirty days))~~ prior to its use.

(5) Training logs must be submitted to the department with the instructor application and include: Instructor trainee signature, instructor-trainer signature, dates and times of each training session, start and stop times of training sessions.

(6) The department may consider other instructional methods, instruction providers, or academic instruction in lieu of those listed in subsection (2) of this section.

~~((6))~~ (7) The department may monitor instructor education courses at any time to ensure that the instructor training requirements of this section are being satisfied.

AMENDATORY SECTION (Amending WSR 12-17-059, filed 8/10/12, effective 9/10/12)

WAC 308-108-100 Place of business—Classroom space. (1) The place of business of a driver training school must:

(a) Not be established nor any business of a driver training school conducted or solicited within one thousand feet of an office building owned or leased by the department of licensing ~~((in which examinations for driver's licenses are conducted. The distance of one thousand feet shall be mea-~~

~~sured along the public streets by the nearest route from the place of business to such building. If the department establishes an office in which examinations for driver's licenses are conducted within one thousand feet of a driver training school's existing location, the driver training school may continue operations in such location until there is a change in school ownership, or the license to operate is not renewed or is suspended or revoked for cause)) which are designated examination locations.~~

(b) Be regularly occupied and used exclusively for the business of giving driver instruction, except for purposes of administering examinations as may be permitted under chapter 308-110 WAC. Regularly occupied means that the public and the department can expect to make contact with the school owner or its staff or instructors at the main office during its business hours; ~~((and))~~

(c) Meet all applicable requirements of chapter 46.82 RCW;

(d) Display an exterior sign with the business name, nature of the business, and hours of operation at the place of business, and on the classroom door or wall during training sessions at secondary locations. Public schools and locations such as a community center are exempt from this requirement.

(2) A driver training school's classroom space must:

(a) Provide sufficient seating and table or desk space for all students enrolled in each class;

(b) Be properly equipped with all other equipment necessary for student training and instruction purposes; and

(c) Be separated from the business office by using walls, partitions, or alternate scheduling when a school must use one space for both activities.

(3) An application for a new school or branch is valid for one hundred eighty days from the date the department receives the application. If, through no fault of the department, the application is not completed within one hundred eighty days, the application will be withdrawn by the department. A new application and fees must be submitted if the applicant wishes to continue applying for a license.

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-110 ~~((Traffic safety education))~~ Behind the wheel instruction vehicles. (1) All ~~((vehicles))~~ licensed driver training schools must have a department approved vehicle(s), and the vehicle(s) used for student instruction by a commercial driver training school shall:

(a) Carry a minimum twenty-piece approved first-aid kit, fire extinguisher safely secured in the vehicle and fully charged, and an operational emergency strobe light, two reflective twelve inch or larger triangles, or two eighteen-inch traffic cones;

(b) Maintain an annual vehicle inspection form meeting minimum equipment and safety criteria established by the department that has been conducted by or for the school owner; ~~((and))~~

~~((Be used exclusively for driver training purposes at all times when student instruction is being given))~~ Schools must exclusively use an approved behind the wheel instruc-

tion vehicle any time an instructor is providing behind the wheel instruction, coaching and/or otherwise mentoring an unlicensed driver; and

(d) Not be put into service until inspected and approved by the department.

(2) Records of all ~~((traffic safety education))~~ behind the wheel instruction vehicles used by a commercial driver training school shall:

(a) Be maintained at the school's primary place of business; and

(b) Include the original insurance policy or policies covering the vehicles and copies of the current vehicle registrations and annual vehicle safety inspection report.

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-120 Administration. (1) The driver training school's license and ~~((all))~~ instructor ~~((certificates))~~ licenses shall be posted in a conspicuous place at the location where instruction takes place. The school license must be posted before engaging students in a course of instruction.

(2) Each driver training school shall adopt and provide for its customers a written policy that includes, but is not limited to:

(a) Enrollment criteria;

(b) Student fees and student fee refunds;

(c) Course failures and course repeats;

(d) ~~((The))~~ Minimum and maximum course duration;

(e) Refusing to allow a student to attend a driver training education course ~~((before the age of fifteen years))~~ that is not fifteen years of age on or before the first day of class of the course;

(f) Refusing to enroll new students in a driver education course after the first three classes have been completed; and

(g) Information about Washington's intermediate driver licensing requirements, restrictions, and penalties and a place for parents to ~~((initial indicating))~~ acknowledge that they have received the information.

(3) Driver training school owners and instructors shall maintain individual student records on forms provided by the department or on substantially similar forms that have been approved by the department. School records must include an approved copy of student record forms showing the department approval date and approval acknowledgment. Failure to obtain department approval on forms prior to their use will be considered a violation of this rule. Student records shall document for each student:

(a) Course attendance, starting, and ending dates;

(b) The dates ~~((and))~~ times, and locations for each session of classroom and behind the wheel instruction;

(c) Classroom and behind the wheel progress and time involvement or flowchart;

(d) Classroom and behind the wheel performance evaluation results;

(e) The ~~((name))~~ license number and signature of the instructor who provided each session of classroom and behind the wheel instruction as well as the student signature; and

(f) That both the student and parent received intermediate license requirements, restriction, and penalty information.

(4) Student records must be maintained by a driver training school for three years from the date instruction has ended.

(5) Driver training school records that must be maintained by a driver training school for three years ~~(;)~~ include, but are not limited to:

- (a) The school's written curriculum guide;
- (b) Insurance policies;
- (c) Collision or injury reports;
- (d) Traffic safety education vehicle registration records;

and

(e) Records of any traffic violations committed by an instructor employed by the school.

(6) Upon the sale or other transfer of a school by its owner, the school and student records shall be transferred to the new owner and become the property and responsibility of the new owner.

(7) The ~~((driving))~~ driver training school owner must notify the department ~~((within thirty days of closing the school and submit all unused traffic safety certificates and student course completion reports to the department.~~

~~(8))~~ no less than thirty days prior to the closing of a main location using the proper department issued form, and prior to closing:

(a) The owner must submit to the department a list of all students that have not completed, or will not complete their driver education course;

(b) Copies of all incomplete student records. This list should include the student's contact information and the status of classroom and behind the wheel lessons completed by the student;

(c) It is the school owner's responsibility to maintain and make accessible the records from the preceding three years.

(8) Class size must not exceed ~~((city))~~ local fire code requirements for the classroom.

(9) Traffic safety education classroom hours shall not overlap between two or more classes.

(10) Failure to renew a school license before it expires will put all related branch office or branch classroom licenses into an inactive status.

(11) Student records are subject to department audit and inspection anytime after ninety days of the school's initial licensing, or as soon as practicable for the department.

(12) Branch ~~((office or classroom))~~ school locations must display an official license issued by the department in a conspicuous place. If the branch school location is in a high school or community center location, the licenses, curriculum, and policies may be kept in a binder that is clearly identified as containing these items, and is readily available on the premises for the public to view.

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06, effective 1/18/07)

WAC 308-108-130 Inspection and review. (1) The department may require that a driver training school owner submit to an inspection or review of the school's operations and records at any time during regular business hours.

(2) Records shall be housed and immediately available for inspection at a driver training school's primary place of business. Branch ~~((office))~~ school records may be housed at the primary place of business, however, such records must be made available for inspection at the branch location within twenty-four hours following a request for review by the department.

(3) Upon receipt of a written inquiry from the department, a driver training school or instructor licensee must provide a comprehensive written response to the department within twenty calendar days.

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-140 Reporting requirements. All driver training school owners shall:

(1) Report to the department within ten days any driving or traffic-related incidents involving an instructor ~~((employed by the school,))~~ including, but not limited to:

- (a) Conviction for a traffic violation;
- (b) Finding that a traffic infraction has been committed;
- (c) Entry into a deferred prosecution agreement; or
- (d) Suspension, revocation, cancellation, or denial of driving privileges.

(2) Report to the department within ~~((twenty-four hours))~~ one business day following any ~~((traffic safety education))~~ occurrence of a behind the wheel instruction vehicle involved in a traffic collision for which an accident report must be or has been made under the provisions of RCW 46.52.030. Prior to the return to service of any ~~((traffic safety education))~~ behind the wheel instruction vehicle that has been involved in a collision, the school owner must forward a vehicle inspection report to the department.

(3) ~~((Forward to the department by the seventh day of each month, a report of student enrollment in traffic safety education courses provided by the school, including))~~ Maintain a roster of students for each course conducted in their school records for audit purposes which shall include, but is not limited to:

(a) The start date and end date of any courses provided by the school ~~((that are initiated during the reporting period)),~~ including the total number of students enrolled in each course;

(b) The names and certificate numbers of all instructors providing classroom and/or behind the wheel instruction for each course; and

(c) The names and instruction permit or driver's license numbers or dates of birth of all students enrolled in each course ~~((, along with the identifying number of the traffic safety education certificate reserved for each student for issuance upon successful completion of the course)).~~

(4) Not less than annually, have completed and have on file at the main school location a vehicle inspection report as required under WAC 308-108-110 (1)(b) for all traffic safety education vehicles in use by the school.

(5) Report to the department within ten days any ~~((new))~~ vehicles used by the school for instructional purposes ~~((or any vehicles))~~ that are taken out of service.

(6) Provide a complete staff certificate application for all initial and renewal staff certificate applications.

AMENDATORY SECTION (Amending WSR 09-21-092, filed 10/20/09, effective 1/1/10)

WAC 308-108-150 Student driver curriculum schedule. A driver training school may offer classroom and behind the wheel instruction to students throughout the year. In order to be approved by the director, a curriculum schedule must satisfy or ~~((include))~~ meet all of the following requirements:

(1) Classroom and behind the wheel instruction that is complementary. This means that classroom instruction is integrated in a timely manner with behind the wheel instruction;

(2) ~~((Having))~~ For students under age eighteen ~~((complete no))~~;

(a) Students may not attend more than two hours of classroom instruction during any single day, except for make-up classes which shall be no more than two additional hours of class;

(b) Make-up classes shall not ~~((to))~~ exceed three total ~~((make-up classes))~~ during the traffic safety education course~~((, and no))~~;

(c) Students may not receive more than one hour of behind the wheel instruction during any single day~~((;))~~;

(3) For students under the age of eighteen to meet the traffic safety education requirement of RCW 46.20.100, instruction that:

(a) Includes not less than thirty hours of classroom instruction~~((;))~~ including, but not limited to, the following classroom topics related to fatal collisions and serious injury:

(i) Run-off-the-road crashes;

(ii) Speeding;

(iii) Impairment;

(iv) Distracted driving;

(v) Hazard awareness/behaviors; and

(vi) Intersection hazards.

(b) Meets the behind the wheel instruction and observation requirements of WAC 308-108-160;

(c) Consists of at least one hour minimum and no more than two hours maximum of class session during a single day, except when adding a make-up class as provided in subsection (2) of this section, in which case classroom instruction must not exceed four hours in a single day;

(d) With the exception of make-up lessons, ensures that all students in a classroom session must be on the same lesson. Open enrollment or self-paced instruction is not permitted; and

(e) Ensures that each traffic safety education classroom course is at least fifty-percent instructor-led verbal instruction consisting of:

(i) In-person training;

(ii) Teacher and student interaction; and

(iii) Questions and answers~~((;))~~;

(4) Classroom and behind the wheel instruction in a course that is scheduled for not less than thirty days in which course lessons must be in contiguous weeks~~((;))~~;

(a) Excluding the student's performance of any make-up class lessons;

(b) Holidays, public school breaks, military service, and severe weather.

(5) Students may not ~~((enroll in))~~ start a traffic safety education course after the third class session of any given course;

(6) All make-up assignments and instruction must be equivalent to the instruction given during the missed sessions, and documented as make-up lessons in the student records;

(7) Distributing to students instructional material developed by the department and the federally designated organ procurement organization for Washington state relating to organ and tissue donation awareness education; and

(8) Review and approval of the local school curriculum by the department as part of the initial application process for a school license, or at any time the school alters their curriculum. To help ensure that minimum standards of instruction are met, the local school curriculum must be approved before use and include, but is not limited to, the following:

(a) Comprehensive elements of classroom and behind the wheel instruction as defined by the department;

(b) Comprehensive written and behind the wheel examinations, to include:

(i) Written examinations as submitted to and approved by the department; and

(ii) Behind the wheel examination criteria as approved by the department~~((;))~~;

(c) A flow chart that indicates how the classroom and behind the wheel instruction are integrated;

(d) Information on the state of Washington's intermediate license requirements, restrictions, violations, and sanctions for violation of these requirements; and

(e) A designated time for a parent, guardian, or employer night that is no less than one hour, which may be a part of the thirty hours of required ~~((for student))~~ training for a student as long as the parent night does not exceed one hour, and must include:

(i) Instruction on the parent, guardian, or employer responsibilities and the importance of parent, guardian, or employer involvement with the teen driver;

(ii) Information on intermediate license laws, restrictions, and sanctions;

(iii) An introduction to the parent guide to teen driving; and

(iv) A questions and answers period.

AMENDATORY SECTION (Amending WSR 07-01-070, filed 12/18/06, effective 9/1/07)

WAC 308-108-160 Behind the wheel instruction and observation. (1) Instruction provided to students under the age of eighteen must include:

(a) Behind the wheel instruction consisting of:

(i) Not less than six hours of on-street behind the wheel vehicle operation under the direct supervision and direction of a licensed instructor; or

(ii) Five or more hours of on-street behind the wheel vehicle operation and four or more hours of driving simulation instruction under the direct supervision and direction of a licensed instructor; and

(b) One or more hours of additional in-vehicle driver observation.

(2) Behind the wheel instruction must be documented on a form provided or approved by the department, including the time the instruction was conducted, the signature of the instructor, and initials of the student.

(3) For purposes of meeting the requirements of WAC 308-108-160 (1)(a), up to ten minutes per sixty minutes of on-street behind the wheel instruction may occur in a parking lot, with the exception of the first behind the wheel lesson. This time must be used for vehicle familiarization and/or pre-trip inspections. Otherwise, on-street behind the wheel instruction includes only the time a student spends driving on the street.

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-165 Prohibition on wireless communication devices during instruction. (1) Driving school instructors, students, and any vehicle passengers, must not use wireless communication devices, hands-free or otherwise, ((that distract from or interfere with the behind the wheel or classroom instruction task)) during any form of behind the wheel instruction is being performed. This includes the use of any communications devices that result in verbal or written text responses while conducting or receiving instruction ((While supervising the operation of a vehicle, instructors are additionally prohibited from sending or receiving messages with these devices)) by the instructor or student. Ring volumes for these devices, or any phone in proximity, are to be silenced or set to vibrate so as not to interfere in any way with the student learning or interacting with the instructor.

(2) This section does not apply to voice activated GPS devices, devices to enter scoring data, or classroom devices that are being used as part of an approved curriculum. This section also does not preclude the use of devices to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property, as permitted under RCW 46.61.667.

(3) An unreasonable risk associated with a failure to obey this section is a violation of RCW 18.235.130(4).

AMENDATORY SECTION (Amending WSR 09-21-093, filed 10/20/09, effective 11/20/09)

WAC 308-108-170 Ensuring student accomplishment. (1) Each driver training school must have a written curriculum guide available to each instructor and such guide shall be used for student instruction.

(2) In order to ((receive)) satisfactorily complete a traffic safety education ((certificate)) course, all students under the age of eighteen must satisfactorily complete all portions of the course of instruction included in the student curriculum ((as approved by the driver instructors' advisory committee)).

(3) In order to satisfactorily complete a school's driver training course, all students under the age of eighteen must pass a comprehensive driving knowledge and skills ((test or tests)) examination or examinations that deal ((s)) with all or

many of the relevant details of the course curriculum that meets the standards established by the department.

The final comprehensive knowledge examination will consist of a minimum of fifty multiple choice questions or a combination of multiple choice and fill-in-the-blank questions.

(4) Each driver training school must assess the needs and progress of students and give appropriate ((direction for additional driving experience and/or parent guided practice)) feedback to the legal parent or guardian to aid with guided parental practice. The school must document how this feedback was communicated to the legal parent or guardian for audit purposes.

AMENDATORY SECTION (Amending WSR 07-01-069, filed 12/18/06, effective 1/18/07)

WAC 308-108-180 Disciplinary action—Public notice of actions taken. (1) Licensee responsibilities:

(a) School owners and instructors are responsible for knowing and complying with the requirements of chapter 46.82 RCW and rules promulgated under that chapter.

(b) Any failure to comply with these requirements or acts of misconduct may lead to disciplinary action affecting an applicant's or licensee's privileges to be licensed, endorsed, certificated or to otherwise operate a commercial driver training school and/or to provide classroom and behind the wheel instruction.

(2) The original or a facsimile of each final order imposing disciplinary action that is issued to a driver training school or any of its instructors by the department shall be conspicuously displayed immediately adjacent to the driver training school's license. The final order shall be displayed for not less than the duration of the sanction period plus the next sixty days or for one year, whichever is less.

NEW SECTION

WAC 308-108-190 Continuing professional development course approval required. (1) Any course provider or developer, driver training school license or instructor license applicant or holder, may submit a course to the department for consideration and approval for purposes of satisfying the continuing education requirement of WAC 308-108-080.

(2) Approval by the department is required before a course can be offered to instructors for fulfilling the continuing education requirement of WAC 308-108-080.

(3) Each request for approval of a course must be submitted to the department on an application form provided by the department.

(4) The director or designee shall approve, disapprove, or conditionally approve complete applications within thirty days of receipt of the application.

(5) Upon approval, disapproval or conditional approval, the applicant will be so advised in writing by the department. Notification of disapproval shall include the reasons for disapproval.

(6) Changes in the course curriculum, content, scope, or duration requires a new application and approval of the revised course, prior to use.

(7) The department at its discretion may choose to review and audit approved courses for compliance with the requirements of this chapter.

NEW SECTION

WAC 308-108-200 Application process for approval of a continuing professional development course. (1) An application for approval of a continuing professional development course must include a complete description of the course content. The description shall identify learning objectives and summarize how these are related to the practice of driver training that benefits the driving instructor in the driving school environment.

(2) In order to obtain approval by the department, complete course approval applications must be submitted at least thirty days prior to the date of course instruction. Course approval applications submitted without advance approval by the department are not assured of approval.

(3) Course approval shall expire four years after the effective date of approval.

NEW SECTION

WAC 308-108-210 General requirements for continuing professional development course approval. Continuing professional development courses must meet the following requirements to be eligible for approval by the director:

(1) Be offered by:

(a) A public or private entity approved by the director;

(b) A public technical or community college or other institution of higher learning; or

(c) The department of licensing.

(2) Have a minimum of one clock-hour of course work or instruction for the student. A clock-hour is a period of no less than fifty minutes of actual instruction.

(3) Provide useful information related to the practice and instruction techniques of driver training.

(4) Be under the supervision of an instructor-trainer or person otherwise approved by the director, who is qualified to teach the material and who shall, at a minimum, be available to respond to student questions.

(5) Confirm student completion of the course by providing a certificate of completion signed by instructor-trainer or other person as approved by the director.

NEW SECTION

WAC 308-108-220 Evaluation of continuing professional development courses. Approved continuing education courses shall be evaluated by the director on an hour-for-hour basis for continuing professional development requirements.

NEW SECTION

WAC 308-108-230 Continuing professional development: Guest lecturer(s)—Defined. A topic area expert(s) may be utilized as a guest lecturer to assist an approved instructor to teach an approved continuing professional

development course. The approved instructor is responsible for supervision of the approved course. Guest lecturer(s) shall not be used to circumvent the requirements for instructor approval listed in this chapter. Guest lecturers shall be limited to no more than fifteen minutes per clock hour. Guest lecturers can only be used when the approved instructor is present.

NEW SECTION

WAC 308-108-240 Grounds for denial or withdrawal of continuing professional education course approval. A continuing professional development course approval may be denied or withdrawn if the course provider or developer or driver training school instructor license applicant or holder:

(1) Submits a course approval application or any other information required to be submitted to the department that is false, incomplete, or deliberately misleading;

(2) Has had a professional license issued by Washington state that has been revoked, suspended or denied;

(3) Fails to meet the requirements of this chapter; or

(4) Has been otherwise determined not eligible to deliver continuing education to driver training instructor license applicants.

NEW SECTION

WAC 308-108-250 Continuing professional development—Disciplinary action. The department shall have the authority, on its own motion or upon complaint made to it, to investigate any approved course or application for course approval to determine compliance with chapter 46.82 RCW and with the rules of this chapter.

AMENDATORY SECTION (Amending WSR 12-17-059, filed 8/10/12, effective 9/10/12)

WAC 308-110-010 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "Agreement" or "contract" means a written agreement entered into between the department and a school for the purposes of RCW 46.82.450.

(2) "Applicant" means a person taking an examination administered by ~~((an))~~ a department-approved examiner to qualify for a Washington driver's license.

(3) "Certified examiner" means a driver training instructor licensed under chapter 46.82 RCW, or a teacher certificated under the provisions of chapter 28A.410 RCW, to teach driver's education, who has been trained and certified by a master examiner and endorsed by the department as meeting the qualifications, education, and training standards for administering knowledge and skills examinations.

(4) "Certified knowledge examiner" means a driver training instructor licensed under chapter 46.82 RCW, or a teacher certificated under the provisions of chapter 28A.410 RCW, to teach driver's education, who has been trained, certified and endorsed by the department as meeting the qualifications, education, and training standards for administering knowledge examinations.

(5) "Examinations" means the tests that meet the department's criteria to assess an applicant's knowledge and skills to operate a motor vehicle.

~~((4)) "Examiner" means a driver training instructor licensed under chapter 46.82 RCW, who has been approved by the department as meeting department qualifications, education, and training standards for administering examinations.~~

~~(5)) (6) "Knowledge ((test)) examination" means ((a)) an examination, delivered by a department endorsed examiner, written or electronically delivered ((test that)) in order to measure((s the)) an applicant's knowledge of traffic laws and ability to safely operate a motor vehicle.~~

~~((6)) (7) "Master examiner" means a driver training instructor licensed under chapter 46.82 RCW, or a teacher certificated under the provisions of chapter 28A.410 RCW, to teach driver's education, who has been trained and certified by a department technical specialist or master examiner auditor and endorsed by the department as meeting the qualifications, education, and training standards for training and certifying instructors in the delivery of knowledge and skills examinations.~~

(8) "School" means a driver training school licensed under chapter 46.82 RCW.

~~((7)) (9) "Skills ((test)) examination" means a ((demonstration of behind the wheel driving)) behind the wheel examination, delivered by a department endorsed certified examiner or master examiner, that measures the applicant's ability to safely operate a motor vehicle on the roadways without endangering the public or property.~~

AMENDATORY SECTION (Amending WSR 12-17-059, filed 8/10/12, effective 9/10/12)

WAC 308-110-020 Agreements—Establishment—Requirements. The department may enter into an agreement to conduct examinations with a main school location that:

(1) Is currently licensed under chapter 46.82 RCW ~~((to provide driver training instruction)), and whose primary function is providing driver's education, and has provided instruction for a period of at least one year, and has not received or is currently under the terms of a disciplinary sanction from the department at any time during the previous twelve months;~~

(2) Complies with chapters 18.235 and 46.82 RCW and regulations adopted under those chapters;

(3) Has submitted a request to enter into an agreement on a form or in a format prescribed by the department; and

(4) Has provided to the department:

(a) A list of department endorsed examiners the school intends to use to administer examinations;

(b) A description of the school's examination practices that includes, but may not be limited to, a school's skills ~~((test))~~ examination route(s) and test starting point(s);

(c) A summary of the school's schedule for administering examinations; and

(d) ~~((A school's knowledge test questions; and~~

~~((e))) Any other information as may be required by the department.~~

AMENDATORY SECTION (Amending WSR 12-17-059, filed 8/10/12, effective 9/10/12)

WAC 308-110-030 Administration of examinations.

(1) Main school locations must enter into and have a valid agreement prior to administering examinations.

~~(2) Schools and department endorsed examiners must conduct skills ((tests using routes that meet department standards:~~

~~(2) Knowledge test questions must be supplied by the department or meet department criteria.~~

~~(3) Knowledge tests)) examinations using department approved routes.~~

In the event an examination route needs modification, the department may decertify the route. Upon decertification, the route shall not be used for examination purposes.

(3) Knowledge examination questions are the property of the department. Using unapproved or outdated examination questions will be considered a violation of the agreement.

(4) Knowledge examinations must be conducted in an area separate from classroom instruction or when a class is not in session, minimizing distractions or interactions.

~~((4)) (5) Examinations must be conducted by department endorsed examiners.~~

~~((5)) (6) Knowledge ((test)) examination results may be used to obtain a driver license for no more than two years from the date of completion.~~

~~((6)) (7) Skills ((test)) examination results may be used to obtain a driver license for no more than one year from the date of completion.~~

~~((7) In accordance with the department's guidelines, schools must refer to the department for testing any)) (8) Any applicant who has a condition that may impair their ability to operate a motor vehicle safely must be referred to the department for examination.~~

~~((8)) (9) Prior to administering the knowledge ((and skills tests)) examination, schools must ensure that applicant((s are)) is:~~

(a) At least fifteen years of age. When the applicant is less than eighteen years of age, the applicant must have successfully completed a traffic safety education course; or

(b) At least fifteen and one-half years of age and if the applicant is less than eighteen years of age, and the applicant does not possess a valid Washington state instruction driving permit.

~~((9)) (10) Prior to administering the skills ((test)) examination, schools will ensure that applicant((s)):~~

(a) Passed the knowledge examination; and

(i) At least eighteen years of age; or

(ii) Has successfully completed a traffic safety education course.

(b) Possess:

(i) A valid Washington state instruction permit or a valid out-of-state instruction permit; or

(ii) A temporary authorization to drive issued on a form prescribed by the department; or

(iii) A valid foreign or international driver's license.

(11) Prior to administering the knowledge or skills examination, schools will ensure applicants are properly

informed regarding ~~((testing))~~ examination requirements and their ~~((test))~~ examination results.

~~(12) Schools must ((also inform applicants of the school's current retesting, refund, and grievance policies and procedures.~~

~~(10) Applicants must possess one of the following to participate in the skills testing portion of the examination:))~~

~~(a) A Washington instruction permit issued under RCW 46.20.055;~~

~~(b) A temporary authorization to drive issued on a form prescribed by the department; or~~

~~(c) A valid foreign driver's license)) retain documentation that the applicant was notified of examination requirements, fee structures, school reexaminations, random reexaminations by the department, refunds, grievance policies and procedures, and any other information as required by the department.~~

~~(13) Schools, instructors, examiners, and staff must not:~~

~~(a) Utilize knowledge or skill examination forms, materials, verbiage, or routes for any purpose other than conducting an examination in accordance with the terms of the agreement; or~~

~~(b) Provide any instruction to an applicant during the same date and time that they are providing an examination.~~

NEW SECTION

WAC 308-110-033 Master examiner requirements.

To qualify as a master examiner, and receive the license endorsement, the instructor or teacher must:

(1) Have been a department or OSPI approved traffic safety education instructor who meets one of the following:

(a) Possesses an instructor trainer as defined in WAC 308-108-020(6) endorsement; or

(b) Have conducted examinations as a certified examiner for a minimum period of six months.

(2) Meet all other department principles, expectations, training and guidelines set forth in the agreement for services contract as well as the examinations manual.

(3) Not have received or be under the terms of a disciplinary sanction from the department or office of the superintendent of public instruction at any time during the previous twelve months.

NEW SECTION

WAC 308-110-035 Certified examiner requirements.

To qualify as a certified examiner, and receive the license endorsement, the instructor or teacher must:

(1) Have been a department or OSPI approved traffic safety education instructor for a minimum period of six months.

(2) Meet all other department principles, expectations, training and guidelines set forth in the agreement for services contract as well as the examinations manual.

(3) Not have received or be under the terms of a disciplinary sanction from the department or office of the superintendent of public instruction at any time during the previous twelve months.

NEW SECTION

WAC 308-110-037 Certified knowledge examiner requirements. To qualify as a certified knowledge examiner, and receive the license endorsement, the instructor or teacher must:

(1) Have been a department or OSPI approved traffic safety education instructor for a minimum period of six months.

(2) Meet all other department principles, expectations, training and guidelines set forth in the agreement for services contract as well as the examinations manual.

(3) Not have received or be under the terms of a disciplinary sanction from the department or office of the superintendent of public instruction at any time during the previous twelve months.

AMENDATORY SECTION (Amending WSR 12-17-059, filed 8/10/12, effective 9/10/12)

WAC 308-110-040 Applicant records, recordkeeping and reporting. (1) Schools must keep applicant records for at least three years. Applicant records must be kept at a school's primary place of business. Records must be immediately available for inspection or audit by the department or its representative.

(2) Schools must keep applicant records on a form or in a format approved by the department. The form must include at ~~((least the))~~ a minimum:

(a) Applicant name, date of birth, and driver's license or instruction permit number~~((s))~~, and proof that the applicant received the school policies; and

~~(b) ((Knowledge and skill test results;~~
~~(c) Examiner's name(s), instructor license number(s), and signature(s);~~

~~(d) Dates and times the examinations were administered to the applicant; and~~

~~(e))~~ Other information required by the department.

(3) Schools must maintain additional records for all examiners in their employment. Upon request, these records must be made available to the department for review; and any other information required by the department.

(4) Schools must submit to the department the knowledge and skills ~~((test))~~ examination results for each applicant in accordance with the school's agreement with the department.

~~((4))~~ (5) The department will monitor outcomes for applicants who take a driver's license examination and will make aggregate outcomes available to the public.

AMENDATORY SECTION (Amending WSR 12-17-059, filed 8/10/12, effective 9/10/12)

WAC 308-110-060 Violations—Impact on agreement. (1) Schools, master examiners, certified examiners, certified knowledge examiners, and ((examiners)) staff examiner support are responsible for complying with the requirements of chapters 46.82 and 18.235 RCW and the rules promulgated under those chapters.

(2) If the department finds that an examiner or school has violated or no longer meets the qualifications or requirements

of chapters 46.82 and 18.235 RCW, the rules promulgated under those chapters, ~~((*))~~ the agreement~~((*))~~, the department may either (a) rescind approval of an examiner to conduct examinations, (b) terminate or suspend for any period of time an agreement with a school, or both.

(3) The department may suspend the entire agreement, or portions thereof, for the period of time it takes the department to process and finalize an investigation of alleged violations. Termination or suspension of the agreement does not limit the right of the department to take further administrative action.

WSR 16-23-167
PROPOSED RULES
GAMBLING COMMISSION
[Filed November 23, 2016, 11:52 a.m.]

Supplemental Notice to WSR 16-12-113.

Preproposal statement of inquiry was filed as WSR 16-07-122.

Title of Rule and Other Identifying Information: Amending WAC 230-06-030 Restrictions and conditions for gambling promotions and 230-06-031 Using wheels in promotional contests of chance, fund-raising events, or gambling activities; promotional contests of chance.

Hearing Location(s): Red Lion, 2300 Evergreen Park Drive S.W., Olympia, WA 98502, (360) 943-4000, on January 12 or 13, 2017, at 1:00 p.m.

NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: January 12 or 13, 2017.

Submit Written Comments to: Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, e-mail rules.coordinator@wsgc.wa.gov, fax (360) 486-3625, by December 20, 2016.

Assistance for Persons with Disabilities: Contact Julie Anderson by January 2, 2017, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Promotions:** The proposed change would allow operators to offer gambling promotions that:

- Allow entry based on disclosed criteria;
- Offer lottery tickets as a prize;
- Add additional merchandise or cash prizes to licensed gambling activities;
- Allow licensed manufacturers, distributors, and service suppliers to give licensees cash or merchandise to offer as a prize to all licensed operators; and
- Allow card rooms to use a physical drawing, spinning a wheel or selection from a group of concealed items to award a prize.

Gambling promotions would no longer be reviewed or approved by us except when a licensed manufacturer, distributor or service supplier provides cash or merchandise to a

licensed operator for a single promotion that exceeds \$25,000. In this case, a licensed manufacturer, distributor and service supplier must receive advance approval by the director. The licensee must submit sufficient information for the director's approval and include specific items from which the director will base their decision.

Use of Wheels in Promotions: The proposed change would allow card room licensees to use spinning wheels in conjunction with promotions they offer to customers.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Tina Griffin, Assistant Director, Lacey, (360) 486-3546; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Josh Stueckle, Agent-in-Charge, Spokane, (509) 325-7909.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule changes would not impose additional costs. The rule changes would allow operators more opportunities for hours of operation and for promotions.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

November 23, 2016

Michelle Rancour
Acting Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-17-056, filed 8/15/14, effective 9/15/14)

WAC 230-06-030 Restrictions and conditions for gambling promotions. Licensees may conduct gambling promotions to encourage players to participate in ~~((*))~~ the gambling activity~~((*))~~ they are licensed to conduct without our review or approval under these restrictions and conditions:

~~(1) ((You must give all players an equal opportunity to participate; and~~

~~(2))) You must establish ~~((standards))~~ rules and restrictions to determine how you will give promotional prizes and items to players~~((You must not give the items based on an element of chance, such as a drawing or spinning wheel, unless you are doing so as part of a bingo game))~~; and~~

~~((*))~~ (2) You must display all rules and restrictions clearly in the gambling area and include them on promotional materials or advertisements; and

(3) You must give all players eligible for the promotion an equal opportunity to participate; and

(4) Except for members-only progressive raffles conducted as authorized in WAC 230-11-091, you must not give another chance to participate in a gambling activity we regulate as a promotional item; and

~~((4) You must display all rules or restrictions clearly in the gambling area and include them on promotional materials or advertisements; and~~

~~(5) You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356-))~~

(5) As part of a gambling promotion, you may add additional merchandise or cash prizes, including increasing payouts for gambling activities you are licensed to conduct; and

(6) Licensed manufacturers, distributors, and service suppliers may give cash or merchandise items to licensed operators to be used as promotional prizes as long as:

(a) The cash or merchandise is offered to all licensed operators; and

(b) The gambling promotion is approved by the director or director's designee when cash or merchandise provided to a licensed operator for a single promotion over twenty-five thousand dollars; and

(7) In order for a licensed manufacturer, distributor, and service supplier to receive approval, the plan for the gambling promotion must be submitted to the director at least ninety days in advance of the intended start date. The promotion must include sufficient information for the director's approval, comply with all applicable federal and state laws, and include:

(a) The gambling promotion rules and restrictions; and

(b) How the operator will safeguard the prizes; and

(c) How the prizes will be given away; and

(d) The beginning and ending dates for the gambling promotion; and

(e) A detailed prize winner's record to be filled out upon completion of the promotion that includes the winner's name, prizes paid out, date the prize was awarded; and

(f) Any other information we request; and

(8) You must not give promotional prizes or items based on additional elements of chance except that:

(a) Licensed bingo operators are authorized to give promotional prizes or items as part of a bingo game; and

(b) Licensed card rooms are authorized to give promotional prizes or items as part of a physical drawing, spinning a wheel, or selecting from a group of concealed items; and

(9) You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356.

Amended Section [AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07)]

WAC 230-06-031 Using wheels in promotional contests of chance, fund-raising events, or gambling activities.

Promotional contests of chance (PCOCs)

(1) Operators may use wheels specifically manufactured for a promotional contest of chance (PCOC), whether commercially made or home made.

(2) Operators must not use professionally manufactured wheels made specifically for gambling activities (for example, Big 6 Wheels) in PCOCs unless they receive permission ahead of time from us.

Fund-raising events

(3) Operators may use commercially made wheels in gambling activities for fund-raising events.

Separation of PCOCs from gambling activities and promotions

(4) No wheel may be used in conjunction with their gambling activities by(~~(~~

~~(a) Card room licensees; or~~

~~(b)) Pull-tab licensees.~~

Card rooms, pull-tabs, bingo, raffles

(5) Licensees and operators must not use professionally manufactured wheels made specifically for gambling activities (for example, Big 6 Wheels) in:

(a) Bingo; or

(b) Card games; or

(c) Pull-tabs.

(6) Operators may use commercially made or home made wheels as part of drawings for prizes, good neighbor prizes, or second element of chance prizes as part of bingo games, as set out in WAC 230-10-280 or to award promotional prizes on card games as set out in WAC 230-06-030.

(7) Raffle licensees and operators may use:

(a) Other types of wheels, such as paddle wheels, in raffles; and

(b) Commercially made or home made wheels in an alternative drawing format for determining the winner of a raffle. Alternative drawing formats are set out in WAC 230-11-055 and 230-11-060.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 16-23-169

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 23, 2016, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-16-011.

Title of Rule and Other Identifying Information: The department is amending WAC 388-106-0270 What services are available under community first choice (CFC)? and 388-106-0274 Are there limits to the assistive technology I may receive?

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on December 27, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 27, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by December 13, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-106-0270 and 388-106-0274 to clarify language related to service descriptions and limits.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.39A.400.

Rule is necessary because of federal court decision, *Home Care Association of America, et. al v. David Weil*.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jacqueline Echols, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-3216.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

November 22, 2016

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

WAC 388-106-0270 What services are available under community first choice (CFC)? The services you may receive under the community first choice program include:

(1) Personal care services(;) as defined in WAC 388-106-0010.

(2) Relief care, which is personal care services by a second individual or agency provider as a back-up to your primary paid personal care provider.

(3) Skills acquisition training, which is training that allows you to acquire, maintain, and enhance skills necessary to accomplish ADLs, IADLs, or health related tasks more independently. Health related tasks are specific tasks related to the needs of an individual(~~(, which))~~ that under state law licensed health professionals can delegate or assign to a qualified health care practitioner.

(4) Personal emergency response systems (PERS), which (~~(is a))~~ are basic electronic (~~(device))~~ devices that (~~(enable))~~ enables you to secure help in an emergency when:

(a) You live alone in your own home; (~~(or))~~

(b) You are alone in your own home for significant parts of the day and have no provider for extended periods of time; or

(c) No one in your home, including you, is able to secure help in an emergency.

(5) Assistive technology, including assistive equipment, which are items that increase your independence or substitute for human assistance specifically with ADL, IADL, or health related tasks, including but not limited to:

(a) Additions to the standard PERS unit, such as fall detection, GPS, or medication delivery with or without reminder systems(~~(. For cost allocation purposes, the cost of additions to the standard PERS unit will be considered assistive technology; or))~~;

(b) Department approved devices, (~~(which include))~~ including but (~~(are))~~ not limited to(~~(:))~~ visual alert systems, voice activated systems, switches and eyegazes, and timers or electronic devices that monitor or sense movement and react in a prescribed manner such as turning on or off an appliance;

(c) Repair or replacing items as limited by WAC 388-106-0274; and

(d) Training of participants and caregivers on the maintenance or upkeep of equipment purchased under assistive technology.

(6) Nurse delegation services(;) as defined in WAC 246-840-910 through 246-840-970.

(7) Nursing services(;) when you are not already receiving (~~(this type of service))~~ nursing services from another source. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, which is care that (~~(would require))~~ requires authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, including but not limited to(;) medication administration or wound care such as debridement(;) nursing services will only provide skilled treatment in the event of an emergency(;) and in nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, home health agency, or other appropriate resource(;);

(e) File review; and

(f) Evaluation of health-related care needs (~~(affecting))~~ that affect service plan and delivery.

(8) Community transition services, which are (~~(non-recurring))~~ nonrecurring, (~~(set-up))~~ setup items or services to assist you with (~~(being discharged))~~ discharge from a nursing facility, institution for mental diseases, or intermediate care facility for individuals with intellectual disabilities, when these items or services are necessary for you to set up your own home(~~(. Community transition services may include))~~, including but not limited to:

(a) Security deposits that are required to lease an apartment or home, including first month's rent;

(b) Essential household furnishings required to occupy and use a community domicile, including furniture, window

coverings, food preparation items, and bath and linen supplies;

(c) ~~((Set up))~~ Setup fees or deposits for utilities, including telephone, electricity, heating, water, and garbage;

(d) Services necessary for your health and safety such as pest eradication and one-time cleaning prior to occupancy;

(e) Moving expenses; and

(f) Activities to assess need, arrange for, and procure necessary resources.

(9) Caregiver management training on how to select, manage and dismiss personal care providers ~~((Training is provided in written, DVD, and web-based formats))~~.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

WAC 388-106-0274 Are there limits to the assistive technology I may receive? (1) There are limits to the assistive technology you may receive. Assistive technology excludes:

(a) Any purchase ~~((that is))~~ solely for recreational purposes;

(b) ~~((Applications for devices that are sold separately from the device,))~~ Subscriptions ~~((;))~~ and data plan charges, ~~((or items that require a))~~ and monthly recurring ~~((fee))~~ fees;

(c) Medical supplies and medical equipment;

(d) Home modifications; and

(e) Any item that would otherwise be covered under any other payment source, including but not limited to ~~((;))~~ medicare, medicaid, and private insurance.

(2) In combination with skills acquisition training, assistive technology purchases are limited to a yearly amount determined by the department per fiscal year.

(3) To help decide whether to authorize ~~((this service,))~~ assistive technology the department may require a treating professional's written recommendation regarding the need for ~~((the))~~ an assistive technology evaluation. The treating professional ~~((making))~~ who makes this recommendation must:

(a) Have personal knowledge of or experience with the requested assistive technology; and

(b) Have examined you, reviewed your medical records, and have knowledge of your level of functioning, and ability to use the technology.

(4) Your choice of ~~((services))~~ assistive technology is limited to the most cost effective option that meets your health and welfare needs.

(5) Replacement of an assistive technology item or piece of equipment is limited to once every two years.

Preproposal statement of inquiry was filed as WSR 16-16-096.

Title of Rule and Other Identifying Information: Amending WAC 230-15-453 Using match play or similar coupons in gambling promotions and 230-15-353 Using match play coupons in nonhouse-banked card games.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive S.W., Olympia, WA 98502, on January 12 and 13, 2017, at 11:00 a.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: January 12 or 13, 2017.

Submit Written Comments to: Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, e-mail rules.coordinator@wsgc.wa.gov, fax (360) 486-3625, by December 20, 2016.

Assistance for Persons with Disabilities: Contact Julie Anderson by January 2, 2017, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Petitioner Warren Montney is seeking a rule change to help start a live poker game after a player has been eliminated from a poker tournament.

- Allow match play coupons be awarded to eligible participants of card tournaments as a gambling promotion; and
- Allow match play coupons be used by the card tournament players in a live card game after the players finish playing in the card tournament; and
- Players would use their money with the match play coupon to place their wager in a live poker game.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0282.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Josh Stueckle, Agent-in-Charge, Spokane, (509) 325-7909; and Implementation: David Trujillo, Director, Lacey, (360) 486-3512.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule changes would not impose additional costs. The changes would allow eligible participants to continue playing in a live poker game after they had been eliminated.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

WSR 16-23-170

PROPOSED RULES

GAMBLING COMMISSION

[Filed November 23, 2016, 12:00 p.m.]

Original Notice.

November 23, 2016
Michelle Rancour
Acting Rules Coordinator

NEW SECTION

WAC 230-15-353 Using match play coupons in non-house-banked card games. Match play coupons may be offered as gambling promotions in nonhouse-banked card games offered by Class F and house-banked licensees with the following restrictions:

(1) The coupons have no value and cannot be redeemed for cash.

(2) Match play coupons may be used as part of a player's wager. The dealer will exchange the match play coupon for the required amount of chips once the match play coupon is used as part of a player's wager and placed into the pot. Upon redemption, the coupon is no longer valid, it cannot be reused, and must be retained as part of the daily card game records.

(3) Restrictions on the use of coupons must be disclosed on the coupon.

(4) Expiration dates must be included on the coupon.

(5) Match play coupon promotions must be given to all players eligible for the promotion and may be awarded based on the outcome of a card game or tournament.

Amended Section [AMENDATORY SECTION (Amending WSR 08-11-044, filed 5/14/08)]

WAC 230-15-453 Using match play or similar coupons in gambling promotions. Match play coupons may be offered as gambling promotions with the following restrictions:

(1) The coupons have no value. Players cannot "double down" on the "match play" portion of the wager.

(2) Players may double down on the chip portion of the wager, not to exceed maximum wagering limits.

(3) A match play coupon is not considered part of the player's wager in determining the amount wagered. Match play coupons may be used by players who wager the maximum allowed.

(4) A match play coupon is itself a gambling promotion and cannot be awarded as a prize in a promotional contest of chance, as authorized in RCW 9.46.0356(~~, or as a prize on a card game~~).

(5) Restrictions on the use of coupons must be disclosed on the coupon.

(6) Expiration dates must be included on the coupon.

(7) Match play and other similar type coupon promotions such as Lucky Bucks and Free Ace, etc., must (~~may~~) be given to all players eligible for the promotion. (~~participants in a card tournament as long as they are given to all participants and are not awarded based on the outcome of the tournament~~.)

(8) Coupon promotions allowing free play must not be given out based upon the outcome of a card game or tournament.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.