

WSR 21-02-002
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed December 23, 2020, 1:48 p.m., effective January 23, 2021]

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

Purpose: Title 246 WAC, the department of health repealed AIDS education and training requirements that fall under the authority of the secretary of health, in support of ESHB 1551 Modernizing the control of certain communicable diseases. These requirements detail the definitions, acceptable training, education, and documentation requirements for health professionals and employees concerning AIDS profession-specific rules including the number of required training hours. The following professions and facility requirements under the secretary's authority are repealed. Professions under the secretary's authority that are not listed have chosen to repeal rules separately:

Health professions: Administrative procedures and requirements for credentialed health care providers. Part 8, AIDS prevention and information education requirements: WAC 246-12-250, 246-12-260, 246-12-270, and 246-12-280.

Counselors: WAC 246-810-080.

Chemical dependency professionals and chemical dependency professionals trainees: WAC 246-811-035 (1)(d) and 246-811-075.

Dental hygienists: WAC 246-815-020(4) and 246-815-100(5).

Dieticians or nutritionists: WAC 246-822-120 (1)(b), (2)(d) and (3)(d) and 246-822-170 (AIDS education requirement only).

Dispensing opticians: WAC 246-824-045(4), 246-824-071(2), and 246-824-170.

Genetic counselors: WAC 246-825-060(3) and 246-825-080 (1)(d).

Medical assistants: WAC 246-827-0220 (1)(e), 246-827-0300(4), 246-827-0410(4), and 246-827-0510(4).

Forensic phlebotomists: WAC 246-827A-0040(3).

Certified reflexologists: WAC 246-831-010 (2)(c)(iv) and 246-831-060 (2)(c).

Ocularists: WAC 246-849-110.

Orthotics and prosthetics rules: WAC 246-850-030(5).

Athletic trainers: WAC 246-916-010(3) and 246-916-030(4).

Radiological technologists: WAC 246-926-200.

Recreation therapists: WAC 246-927-010.

Respiratory care practitioners: WAC 246-928-550.

Sex offender treatment provider: WAC 246-930-020 (2)(f).

Surgical technologist program: WAC 246-939-020 (2) (a).

Certified animal massage therapists: WAC 246-940-020 (4) and 246-940-040(5).

Home care aide rules: WAC 246-980-040 (1)(d).

Facilities: Ambulatory surgical facilities: WAC 246-330-140(6).

Childbirth centers: WAC 246-329-110 (1)(g).

Hospital licensing regulations: WAC 246-320-156(9).

Private alcohol and chemical dependency hospitals: WAC 246-324-050 (12)(e) (HIV/AIDS training only) and 246-324-060.

Private psychiatric and alcoholism hospitals: WAC 246-322-050 (12)(e) and 246-322-060.

Citation of Rules Affected by this Order: Repealing WAC 246-12-250, 246-12-260, 246-12-270, 246-12-280, 246-810-080, 246-811-075, 246-824-170, 246-849-110, 246-926-200, 246-927-010, 246-928-550, 246-324-060 and 246-322-060; and amending WAC 246-811-035 (1)(d), 246-815-020(4), 246-815-100(5), 246-822-120 (3)(d), 246-822-170, 246-822-120 (1)(b), 246-822-120 (2)(d), 246-824-045(4), 246-824-071(2), 246-825-060(3), 246-825-080 (1)(d), 246-827-0220 (1)(e), 246-827-0300(4), 246-827-0410(4), 246-827-0510(4), 246-827A-0040(3), 246-324-050 (12)(e), 246-322-050 (12)(e), 246-831-010 (2)(c)(iv), 246-831-060 (2)(c), 246-850-030(5), 246-916-010(3), 246-916-030(4), 246-930-020 (2)(f), 246-939-020 (2)(a), 246-940-020(4), 246-940-040(5), 246-980-040 (1)(d), 246-330-140(6), 246-329-110 (1)(g), and 246-320-156(9).

Statutory Authority for Adoption: RCW 18.19.050, 18.29.130, 18.29.210, 18.34.120, 18.46.060, 18.55.095, 18.84.040, 18.88B.060, 18.89.050, 18.130.050, 18.138.070, 18.155.040, 18.200.050, 18.205.060, 18.215.040, 18.230.040, 18.240.050, 18.250.020, 18.290.020, 18.360.030, 18.360.070, 70.41.030, 70.230.020, 71.12.670, and 18.108.085.

Adopted under notice filed as WSR 20-20-077 on October 2, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 29, Repealed 13.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 29, Repealed 13.

Date Adopted: December 21, 2020.

Jessica Todorovich
 Chief of Staff
 for Umair Shah, MD, MPH
 Secretary

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-12-250 Definitions.

WAC 246-12-260 Who must obtain AIDS education?

WAC 246-12-270 Acceptable AIDS education and training.

WAC 246-12-280 What is acceptable documentation?

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

WAC 246-320-156 Management of human resources. This section ensures that hospitals provide competent staff consistent with scope of services.

Hospitals must:

(1) Establish, review, and update written job descriptions for each job classification;

(2) Conduct periodic staff performance reviews;

(3) Assure qualified staff available to operate each department including a process for competency, skill assessment and development;

(4) Assure supervision of staff;

(5) Document verification of staff licensure, certification, or registration;

(6) Complete tuberculosis screening for new and current employees consistent with the *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Healthcare Facilities, 2005. Morbidity Mortality Weekly Report (MMWR) Volume 54, December 30, 2005;*

(7) Orient staff to their assigned work environment;

(8) Give infection control information to staff upon hire and annually which includes:

(a) Education on general infection control according to chapter 296-823 WAC bloodborne pathogens exposure control;

(b) Education specific to infection control for multidrug-resistant organisms; and

(c) General and specific infection control measures related to the patient care areas where staff work((;

~~(9) Establish and implement an education plan that verifies or arranges for the training of staff on prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310).~~

AMENDATORY SECTION (Amending WSR 95-22-012, filed 10/20/95, effective 11/20/95)

WAC 246-322-050 Staff. The licensee shall:

(1) Employ sufficient, qualified staff to:

(a) Provide adequate patient services;

(b) Maintain the hospital free of safety hazards; and

(c) Implement fire and disaster plans;

(2) Develop and maintain a written job description for the administrator and each staff position;

(3) Maintain evidence of appropriate qualifications and current credentials prior to hiring, or granting or renewing clinical privileges or association of any health care professional;

(4) Verify work references prior to hiring staff;

(5) Assure all patient-care staff including those transporting patients and supervising patient activities, except licensed staff whose professional training exceeds first-responder training, have within thirty days of employment:

(a) Current cardiopulmonary resuscitation cards from instructors certified by the American Red Cross, American Heart Association, United States Bureau of Mines, or Washington state department of labor and industries; and

(b) Current first-aid cards from instructors certified as in (a) of this subsection;

(6) Provide and document orientation and appropriate training for all staff, including:

(a) Organization of the hospital;

(b) Physical layout of hospital, including buildings, departments, exits, and services;

(c) Fire and disaster plans, including monthly drills;

(d) Infection control;

(e) Specific duties and responsibilities;

(f) Policies, procedures, and equipment necessary to perform duties;

(g) Patient rights according to chapters 71.05 and 71.34 RCW and patient abuse;

(h) Managing patient behavior; and

(i) Appropriate training for expected duties;

(7) Make available an ongoing, documented, in-service education program((;)) including, but not limited to:

(a) For each staff person, training to maintain and update competencies needed to perform assigned duties and responsibilities; and

(b) For patient care staff, in addition to (a) of this subsection, the following training:

(i) Methods of patient care;

(ii) Using the least restrictive alternatives;

(iii) Managing assaultive and self-destructive behavior;

(iv) Patient rights pursuant to chapters 71.05 and 71.34 RCW;

(v) Special needs of the patient population, such as children, minorities, elderly, and individuals with disabilities;

(vi) Cardiopulmonary resuscitation; and

(vii) First-aid training;

(8) When volunteer services are used within the hospital:

(a) Designate a qualified employee to be responsible for volunteer services;

(b) Provide and document orientation and training according to subsections (6) and (7) of this section for each volunteer; and

(c) Provide supervision and periodic written evaluations of each volunteer working directly with patients;

(9) In addition to following WISHA requirements, protect patients from tuberculosis by requiring each staff person to have upon employment or starting service, and each year thereafter during the individual's association with the hospital:

(a) A tuberculin skin test by the Mantoux method, unless the staff person:

(i) Documents a previous positive Mantoux skin test, which is ten or more millimeters of induration read at forty-eight to seventy-two hours;

(ii) Documents meeting the requirements of this subsection within the six months preceding the date of employment; or

(iii) Provides a written waiver from the department or authorized local health department stating the Mantoux skin test presents a hazard to the staff person's health;

(b) A second test one to three weeks after a negative Mantoux skin test for staff thirty-five years of age or older; and

(c) A chest X-ray within seven days of any positive Mantoux skin test;

(10) Report positive chest X-rays to the appropriate public health authority, and follow precautions ordered by a physician or public health authority;

(11) Restrict a staff person's contact with patients when the staff person has a known communicable disease in the infectious stage which is likely to be spread in the hospital setting or by casual contact; and

(12) Maintain a record on the hospital premises for each staff person, during employment and for two years following termination of employment~~(7)~~ including, but not limited to:

(a) An employment application;

(b) Verification of required education, training and credentials;

(c) Documentation of contacting work references as required by subsection (4) of this section;

(d) Criminal history disclosure and background checks as required in WAC 246-322-030;

~~(e) ((Verification of current cardiopulmonary resuscitation, first aid and HIV/AIDS training;~~

~~(f))~~ Tuberculin test results, reports of X-ray findings, exceptions, physician or public health official orders, and waivers; and

~~((g))~~ ~~(f)~~ Annual performance evaluations.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-322-060 HIV/AIDS education and training.

AMENDATORY SECTION (Amending WSR 95-22-013, filed 10/20/95, effective 11/20/95)

WAC 246-324-050 Staff. The licensee shall:

(1) Employ sufficient, qualified staff to:

(a) Provide adequate patient services;

(b) Maintain the hospital free of safety hazards; and

(c) Implement fire and disaster plans~~(7)~~;

(2) Develop and maintain a written job description for the administrator and each staff position;

(3) Maintain evidence of appropriate qualifications and current credentials prior to hiring, or granting or renewing clinical privileges or association of any health care professional;

(4) Verify work references prior to hiring staff;

(5) Assure all patient-care staff including those transporting patients and supervising patient activities, except licensed staff whose professional training exceeds first-responder training, have within thirty days of employment:

(a) Current cardiopulmonary resuscitation cards from instructors certified by the American Red Cross, American Heart Association, United States Bureau of Mines, or Washington state department of labor and industries; and

(b) Current first-aid cards from instructors certified as in (a) of this subsection~~(7)~~;

(6) Provide and document orientation and appropriate training for all staff, including:

(a) Organization of the hospital;

(b) Physical layout of hospital, including buildings, departments, exits, and services;

(c) Fire and disaster plans, including monthly drills;

(d) Infection control;

(e) Specific duties and responsibilities;

(f) Policies, procedures, and equipment necessary to perform duties;

(g) Patient rights according to chapters 71.05 and 71.34 RCW and patient abuse;

(h) Managing patient behavior; and

(i) Appropriate training for expected duties~~(7)~~;

(7) Make available an ongoing, documented, in-service education program~~(7)~~ including, but not limited to:

(a) For each staff person, training to maintain and update competencies needed to perform assigned duties and responsibilities; and

(b) For patient care staff, in addition to (a) of this subsection, the following training:

(i) Methods of patient care;

(ii) Using the least restrictive alternatives;

(iii) Managing assaultive and self-destructive behavior;

(iv) Patient rights pursuant to chapters 71.05 and 71.34 RCW;

(v) Special needs of the patient population, such as children, minorities, elderly, and individuals with disabilities;

(vi) Cardiopulmonary resuscitation; and

(vii) First-aid training~~(7)~~;

(8) When volunteer services are used within the hospital:

(a) Designate a qualified employee to be responsible for volunteer services;

(b) Provide and document orientation and training according to subsections (6) and (7) of this section for each volunteer; and

(c) Provide supervision and periodic written evaluations of each volunteer working directly with patients~~(7)~~;

(9) In addition to following WISHA requirements, protect patients from tuberculosis by requiring each staff person to have upon employment or starting service, and each year thereafter during the individual's association with the hospital:

(a) A tuberculin skin test by the Mantoux method, unless the staff person:

(i) Documents a previous positive Mantoux skin test, which is ten or more millimeters of induration read at forty-eight to seventy-two hours;

(ii) Documents meeting the requirements of this subsection within the six months preceding the date of employment; or

(iii) Provides a written waiver from the department or authorized local health department stating the Mantoux skin test presents a hazard to the staff person's health~~(7)~~;

(b) A second test one to three weeks after a negative Mantoux skin test for staff thirty-five years of age or older; and

(c) A chest X-ray within seven days of any positive Mantoux skin test~~(7)~~;

(10) Report positive chest X-rays to the appropriate public health authority, and follow precautions ordered by a physician or public health authority;

(11) Restrict a staff person's contact with patients when the staff person has a known communicable disease in the infectious stage which is likely to be spread in the hospital setting or by casual contact; and

(12) Maintain a record on the hospital premises for each staff person, during employment and for two years following termination of employment, including, but not limited to:

- (a) An employment application;
- (b) Verification of required education, training and credentials;
- (c) Documentation of contacting work references as required by subsection (4) of this section;
- (d) Criminal history disclosure and background checks as required in WAC 246-324-030;
- (e) Verification of current cardiopulmonary resuscitation and first-aid ~~((and HIV/AIDS training))~~;
- (f) Tuberculin test results, reports of X-ray findings, exceptions, physician or public health official orders, and waivers; and
- (g) Annual performance evaluations.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-324-060 HIV/AIDS education and training.

AMENDATORY SECTION (Amending WSR 07-07-075, filed 3/16/07, effective 4/16/07)

WAC 246-329-110 Personnel policy and procedures and records. The purpose of this section is to ensure the birth center provides direction and standards in the employment, contracting and recording of personnel procedures.

(1) A childbirth center applicant or licensee must establish and implement policy and procedures which include, but are not limited to:

- (a) For those birth centers operated by an employer as defined by RCW 49.60.040(3), employment criteria consistent with chapter 49.60 RCW;
- (b) Job descriptions for employees, contractor agreements, volunteer responsibility statements and agreements with students commensurate with responsibilities and consent with health care professional credentialing and scope of practice as defined in relevant practice acts and associated rules;
- (c) Verification of clinical staff credentials;
- (d) Orientation to current agency policies and procedures and verification of skills or training for all clinical staff;
- (e) Current neonatal and adult cardiopulmonary resuscitation training consistent with agency policies and procedures and community standards for all clinical staff;
- (f) Infection control practices for clinical staff including communicable disease testing, immunization, vaccination and universal precautions or equivalent method of preventing the transmission of infection according to current local health authorities and shall include the availability of equipment

necessary to implement plans of care and infection control policies and procedures;

(i) Birth centers must establish and implement a TB screening program for personnel;

(ii) Birth centers must provide or offer to employees Hepatitis B vaccination according to WAC 296-62-08001; and

(iii) Birth centers must assure that all contractors have received or been offered Hepatitis B vaccination according to WAC 296-62-08001;

~~((g))~~ ~~((Verification of appropriate education and training of all personnel, contractors, student and volunteers on the prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310;~~

~~((h)))~~ Performance evaluations of all personnel, including evaluations of contractor and student agreements to be conducted per birth center's policy and procedure; and

~~((i)))~~ (h) Washington state patrol criminal background inquiries and disclosure statements under RCW 43.43.830 through 43.43.845 for the administrator, owner, director of services and personnel, contractors, volunteers, students, and any other individual associated with the licensee who has direct contact with children under sixteen years of age, people with developmental disabilities or vulnerable adults.

(2) Each employee, contractor, student and volunteer shall have a current record maintained by the birth center which contains, but is not limited to, the following information:

(a) Documentation of the items stated above in subsection (1)(b) through (e) ~~((and)), (g) ((through (i))), and (h))~~ of this section.

(b) Evidence of communicable disease testing as required by local health authorities and per birth center policy and procedures and shall include, at a minimum, documented evidence of tuberculin (TB) screening as required in WAC 246-329-110 (1)(f) and documented evidence of Hepatitis B vaccination being provided or offered according to WAC 296-62-08001.

AMENDATORY SECTION (Amending WSR 09-09-032, filed 4/7/09, effective 5/8/09)

WAC 246-330-140 Management of human resources. This section ensures that ambulatory surgical facilities provide competent staff consistent with scope of services.

Ambulatory surgical facilities must:

- (1) Create and periodically review job descriptions for all staff;
- (2) Supervise staff performance to assure competency;
- (3) Verify and document licensure, certification, or registration of staff;
- (4) Complete tuberculosis screening for new and current employees consistent with the *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Healthcare Facilities*, 2005. *Morbidity Mortality Weekly Report (MM - WR) Volume 54*, December 30, 2005;
- (5) Provide infection control information to staff upon hire and annually which includes:

(a) Education on general infection control according to chapter 296-823 WAC blood borne pathogens exposure control; and

(b) General and specific infection control measures related to patient care.

~~((6) Establish and implement an education plan that verifies staff training on prevention, transmission, and treatment of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) consistent with RCW 70.24.310.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-810-080 What are the requirements for AIDS prevention and information education?

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-811-035 Certification of a substance use disorder professional trainee. (1) The department of health will issue a substance use disorder professional trainee certificate to an individual who:

(a) Submits an application on forms the department provides;

(b) Includes written documentation to meet the eligibility criteria;

(c) Declares that he or she is enrolled in an approved school and gaining the experience required to receive a substance use disorder professional credential((;

~~(d) Submit evidence of completion of four clock hours of AIDS education. The requirement of WAC 246-811-030 (2) (g) will satisfy this requirement)).~~

(2) A substance use disorder professional trainee must submit a signed declaration with their annual renewal that states they are enrolled in an approved education program, or have completed the educational requirements, and are obtaining the experience requirements for a substance use disorder professional credential.

(3) A substance use disorder professional trainee certificate can only be renewed four times.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-811-075 AIDS prevention and information education requirements.

AMENDATORY SECTION (Amending WSR 18-21-141, filed 10/19/18, effective 11/19/18)

WAC 246-815-020 Dental hygiene licensure—Eligibility and application requirements. An applicant for a dental hygiene license shall submit to the department the following:

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

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

(3) Proof of successful completion of the Washington state dental hygiene drug and law jurisprudence exam as required by the department;

~~(4) ((Proof of completion of seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8;~~

~~(5)))~~ Official transcripts verifying successful completion of an approved dental hygiene education program and proof of successful completion of any applicable expanded education programs approved under WAC 246-815-030. Official transcripts must be sent directly to the department by the dental hygiene education program(s). No other proof of successful completion is acceptable;

~~((6)))~~ (5) Official verification of passing the National Board Dental Hygiene written examination, as offered by the American Dental Association. Official verification must be sent directly to the department from the American Dental Association Department of Testing Services; and

~~((7)))~~ (6) Official verification of passing the dental hygiene examinations as required in WAC 246-815-050. Official verification must be sent directly to the department from the testing agency.

AMENDATORY SECTION (Amending WSR 18-21-141, filed 10/19/18, effective 11/19/18)

WAC 246-815-100 Licensure by interstate endorsement of credentials. An individual may be eligible for a Washington state dental hygiene license if the applicant:

(1) Has successfully completed a dental hygiene education program in compliance with the requirements listed in WAC 246-815-030.

(2) Holds a valid, current, nonlimited license in another state.

(3) Has been currently engaged in clinical practice at any time within the previous year as a dental hygienist in another state or in the discharge of official duties in the United States Armed Services, Coast Guard, Public Health Services, United States Department of Veteran Affairs, or Bureau of Indian Affairs. Verification of licensure must be obtained from the state of licensure, and any fees for verification required by the state of licensure must be paid by the applicant.

(4) Has successfully completed a dental hygiene examination where the other state's licensing standards are substantively equivalent to the licensing standards in the state of Washington. The other state's examination must have included the following portions and standards of competency.

(a) Written tests - The written tests mean the National Board of Dental Hygiene examination as required in WAC 246-815-020.

(b) Practical tests - All portions must be graded anonymously by calibrated practicing dental hygienists or dental hygienists and dentists. Examiners will be calibrated to the standards of competency. The examination must have equivalent patient selection criteria for the patient evaluation, pro-

phylaxis and anesthesia portions. In lieu of the WREB or CRDTS practical tests, the secretary may accept substantially equivalent tests. The practical tests include:

- (i) Patient evaluation clinical competency including an extra-oral and intra-oral examination;
- (ii) Prophylaxis clinical competency;
- (iii) Anesthesia clinical competency; and
- (iv) Restorative clinical competency.

(c) If the secretary finds that another state's licensing standards are substantively equivalent except for portion(s) of the examination, the applicant may take that portion(s) to qualify for interstate endorsement. The applicant must successfully complete the portion(s) of the exam to qualify for interstate endorsement.

~~(5) ((Has completed seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~(6))~~ Has passed the Washington state drug and law jurisprudence examination.

~~((7))~~ (6) Submits a completed application on forms provided by the department.

~~((8))~~ (7) Pays fees as required in WAC 246-815-990.

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

WAC 246-822-120 Application requirements. (1) Individuals applying for certification as a certified dietitian must submit:

- (a) A completed application form with fee; and
- (b) ~~((Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8; and~~
- ~~(e))~~ Verification of current registration status with the commission on dietetic registration.

(2) Individuals applying for certification as a certified dietitian who have not passed the required written examination or who are not registered with the commission on dietetic registration must:

- (a) Provide transcripts forwarded directly from the issuing college or university showing completion of a baccalaureate degree or higher in a major course of study in human nutrition, foods and nutrition, dietetics, or food management;
- (b) Provide evidence of completion of a continuous pre-professional experience or coordinated undergraduate program in dietetics under the supervision of a qualified supervisor; and

(c) Take and pass the required written examination(~~;~~ and

~~(d) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8)).~~

(3) Individuals applying for certification as a certified nutritionist must submit:

- (a) A completed application form with fee; and
- (b) Documentation that the applicant meets the application requirements for certified dietitians, as set forth in subsection (1) or (2) of this section; or

(c) Transcripts forwarded directly from the issuing college or university showing completion of a masters or doctorate degree in one of the following subject areas: Human nutrition, nutrition education, foods and nutrition, or public health nutrition(~~;~~ and

~~(d) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8)).~~

AMENDATORY SECTION (Amending WSR 92-02-018, filed 12/23/91, effective 1/23/92)

WAC 246-822-170 Certification for dietitians—Grandfathering. An individual may be certified as a certified dietitian if he or she provides evidence of meeting criteria for registration with the commission on dietetic registration on June 9, 1988(~~;~~ and provides documentation of completion of the AIDS education requirements as set forth in WAC 246-822-110)).

AMENDATORY SECTION (Amending WSR 18-04-110, filed 2/7/18, effective 3/15/18)

WAC 246-824-045 License application. An applicant for a dispensing optician license must submit the following:

(1) A completed application on forms provided by the department;

(2) Proof of eligibility under WAC 246-824-040;

(3) Verification of passing the examination under WAC 246-824-040(4); and

(4) ~~((Proof of completing four clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8; and~~

~~(5))~~ Fees required under WAC 246-824-990.

AMENDATORY SECTION (Amending WSR 18-04-110, filed 2/7/18, effective 3/15/18)

WAC 246-824-071 Applicants currently licensed in other states. Before licensure to any individual currently licensed to practice as a dispensing optician in another state, as provided in chapter 18.34 RCW, applicants must provide evidence of:

(1) Verification of credential from any state and the state's substantially equivalent licensing standards;

(2) ~~((Completion of four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8;~~

~~(3))~~ Verification from all states in which the applicant has ever held a license, whether active or inactive, indicating that the applicant is not subject to charges or disciplinary action for unprofessional conduct or impairment.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-824-170 AIDS prevention and information education requirements.

AMENDATORY SECTION (Amending WSR 10-22-090, filed 11/1/10, effective 11/1/10)

WAC 246-825-060 Licensure requirements. (1) An applicant for licensure as a genetic counselor must:

(a) Have a master's degree from a genetic counseling training program that is accredited or was accredited at the

time of the applicant's graduation by the ABGC or an equivalent program as determined by the ABGC; or

(b) Have a doctorate from a medical genetics training program that is accredited by ABMG or an equivalent program as determined by the ABMG; and

(2) Meet examination requirements under WAC 246-825-050; and

(3) ~~((Complete four clock hours of AIDS education and training as required under chapter 246-12 WAC, Part 8; and~~

~~(4))~~ Pay fees required under WAC 246-825-990(2); and

~~((5))~~ (4) Provide any other written declarations or documentation, as required by the secretary.

AMENDATORY SECTION (Amending WSR 10-22-090, filed 11/1/10, effective 11/1/10)

WAC 246-825-080 Licensure by endorsement. (1) An applicant for licensure as a genetic counselor who is currently licensed under the laws of another state shall file an application with the department and submit:

(a) Documentation verifying that the applicant meets the education requirements under WAC 246-825-060;

(b) Documentation that the applicant holds an unrestricted active license to practice as a genetic counselor in another state;

(c) Proof of passing the ABGC certification examination or the ABMG general genetics and genetic counseling specialty examinations or the ABMG clinical genetics specialty or subspecialty certification examinations;

(d) ~~((Documentation of completion of four clock hours of AIDS education and training as required under chapter 246-12 WAC, Part 8;~~

~~(e))~~ Any other written declarations or documentation, as required by the secretary; and

~~((f))~~ (e) Fees required under WAC 246-825-990(2).

(2) The secretary may examine an endorsement application to determine whether the licensing standards of the other state are substantially equivalent to the licensing standards in Washington state.

(3) An endorsement applicant may also apply for a temporary practice permit as established under WAC 246-12-050.

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0220 Medical assistant-certified—Application—Interim certification. (1) Application requirements - Applicants for a medical assistant-certified credential shall submit the following:

(a) Completed application on forms provided by the department;

(b) Proof of completion of high school education or its equivalent;

(c) Proof of successful completion of the required education or approved training program;

(d) Proof of successful completion of an approved examination under WAC 246-827-0200(2), completed within five years prior to submission of an initial application for this credential;

~~(e) ((Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;~~

~~(f))~~ Any fee required in WAC 246-827-990; and

~~((g))~~ (f) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

(2) An applicant who has met all the requirements in subsection (1) of this section, except passage of the examination, may be issued an interim certification.

(a) A person who has an interim certification possesses the full scope of practice of a medical assistant-certified.

(b) A person who has an interim certification must notify their employer any time they fail any of the examinations listed in WAC 246-827-0200(2).

(c) A person's interim certification expires upon issuance of the medical assistant-certified credential or one year after issuance of the interim certification, whichever occurs first.

(d) A person cannot renew an interim certification.

(e) A person is only eligible for an interim certification upon initial application.

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0300 Medical assistant-registered—Application. Registration requirements - Applicants for a medical assistant-registered credential shall submit the following:

(1) A completed application on forms provided by the department;

(2) Proof of completion of high school education or its equivalent;

(3) An endorsement signed by a health care practitioner;

(4) ~~((Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;~~

~~(5))~~ Any fee required in WAC 246-827-990; and

~~((6))~~ (5) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0410 Medical assistant-phlebotomist—Application. Application requirements - Applicants for a medical assistant-phlebotomist credential shall submit the following:

(1) A completed application on forms provided by the department;

(2) Proof of completion of high school education or its equivalent;

(3) Proof of successful completion of a phlebotomy program through a postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education or successful completion of a phlebotomy training program as attested by the phlebotomy training program's supervising health care practitioner;

(4) ~~((Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;~~

~~(5))~~ Any fee required in WAC 246-827-990; and

~~((6))~~ (5) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0510 Medical assistant-hemodialysis technician—Application. Applicants for a medical assistant-hemodialysis technician credential shall submit the following:

- (1) A completed application on forms provided by the department;
- (2) Proof of high school education or equivalent;
- (3) Proof of successful completion of an approved training program or proof of national credential as a hemodialysis technician;
- ~~(4) ((Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;~~
- ~~(5))~~ Current cardiopulmonary resuscitation certification;
- ~~((6))~~ (5) Any fee required in WAC 246-827-990; and
- ~~((7))~~ (6) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

AMENDATORY SECTION (Amending WSR 19-09-063, filed 4/16/19, effective 5/17/19)

WAC 246-827A-0040 Application requirements. An applicant for a forensic phlebotomist credential must submit the following to the department:

- (1) Completed application on forms provided by the department;
- (2) Proof of successful completion of the required education or approved training program described under WAC 246-827A-0030;
- ~~(3) ((Proof of completing seven clock hours of HIV/AIDS education as required by chapter 246-12 WAC, Part 8;~~
- ~~(4))~~ Proof of current employment as a law enforcement or police officer, or current employment at a detention or correction facility;
- ~~((5))~~ (4) Any fee required in WAC 246-827A-990;
- ~~((6))~~ (5) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department; and
- ~~((7))~~ (6) Any additional documentation or information requested by the department.

AMENDATORY SECTION (Amending WSR 13-12-044, filed 5/31/13, effective 7/1/13)

WAC 246-831-010 Credentialing requirements. (1) An applicant for a reflexologist certification must be eighteen years of age or older.

- (2) An applicant for a reflexologist certification must submit to the department:
 - (a) A completed application on forms provided by the secretary;
 - (b) Fees as required in WAC 246-831-990;

- (c) Evidence of completion of:
 - (i) A reflexology education program approved by the secretary;
 - (ii) An examination approved by the secretary;
 - (iii) A jurisprudence examination approved by the secretary;
 - ~~(iv) Four hours of AIDS education and training as required in chapter 246-12 WAC, Part 8).~~
- (d) Any additional documents or information requested by the secretary.

AMENDATORY SECTION (Amending WSR 13-12-044, filed 5/31/13, effective 7/1/13)

WAC 246-831-060 Waiver of examination. An applicant may obtain a waiver of the examination for certification as a reflexologist.

- (1) The applicant must apply for certification between July 1, 2013 and July 1, 2014.
- (2) In addition to the requirements in RCW 18.108.131, the applicant must provide to the department:
 - (a) A completed application on forms provided by the secretary;
 - (b) Fees as required in WAC 246-831-990; and
 - ~~(c) ((Verification of four clock hours of AIDS education and training as required in chapter 246-12 WAC, Part 8; and~~
 - ~~(d))~~ Evidence of completion of a jurisprudence examination approved by the secretary.
- (3)(a) Verification that the applicant has practiced reflexology as a licensed massage practitioner for at least five years prior to July 1, 2013; or
 - (b) Evidence satisfactory to the secretary that the applicant has, prior to July 1, 2013, successfully completed a course of study in a reflexology program approved by the secretary.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-849-110 AIDS prevention and information education requirements.

AMENDATORY SECTION (Amending WSR 19-09-065, filed 4/16/19, effective 5/17/19)

WAC 246-850-030 Application requirements. An applicant for licensure shall submit to the department the following:

- (1) A completed application and fee as required in chapter 246-12 WAC, Part 2;
- (2)(a) Official transcripts, certificate, or other documentation forwarded directly from the issuing agency where the applicant has earned a bachelor degree or completed a certificate program from a program accredited by NCOPE or CAAHEP, or any other accrediting body with substantially equivalent requirements;
- (b) Documentation of successful completion of the clinical patient management course, if the applicant completes

education requirements for licensure on or after January 1, 2020;

(3) Documentation of completion of an approved internship or residency as described in WAC 246-850-050;

(4) Documentation of successful completion of licensing examinations as approved by the secretary;

(5) ~~((Verification of four clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8;~~

~~(6))~~ Verification from all states in which the applicant holds or has held a license, whether active or inactive, indicating that the applicant is or has not been subject to charges or disciplinary action for unprofessional conduct or impairment; and

~~((7))~~ (6) Additional documentation as required by the secretary to determine whether an applicant is eligible for licensure.

AMENDATORY SECTION (Amending WSR 08-11-060, filed 5/16/08, effective 7/1/08)

WAC 246-916-010 Licensure requirements. To be eligible for licensure, applicants must provide evidence of:

(1) Completion of an approved educational program as determined in WAC 246-916-020; and

(2) Attaining a passing score on the examination administered by the board of certification for athletic trainers (BOC) or its predecessor or successor organization as approved by the secretary; and

~~(3) ((Completion of seven clock hours of AIDS education and training as required in chapter 246-12 WAC, Part 8; and~~

~~(4))~~ Any other written declarations or documentation, as required by the secretary.

AMENDATORY SECTION (Amending WSR 08-11-060, filed 5/16/08, effective 7/1/08)

WAC 246-916-030 Applicants currently licensed in other states. Before licensure may be issued to any individual currently licensed to practice as an athletic trainer in another state, as provided in chapter 18.250 RCW, applicants must provide evidence of:

(1) Having met the education requirements for licensure as defined in WAC 246-916-020; and

(2) Attaining a passing score on the examination as defined in WAC 246-916-010; and

(3) Verification of credential from any state; and

~~(4) ((Completion of seven clock hours of AIDS education and training as required in chapter 246-12 WAC, Part 8; and~~

~~(5))~~ Any other written declarations or documentation, as required by the secretary.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-926-200 AIDS prevention and information education requirements.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-927-010 How many hours of AIDS prevention and information education do I need?

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-928-550 Education and training in AIDS prevention is required for licensure as a respiratory care practitioner.

AMENDATORY SECTION (Amending WSR 05-12-014, filed 5/20/05, effective 6/20/05)

WAC 246-930-020 Underlying credential as a health professional required. (1) Under RCW 18.155.020(1), only credentialed health professionals may be certified as providers.

(2) A person who is credentialed as a health professional in a state or jurisdiction other than Washington may satisfy this requirement by submitting the following:

(a) A copy of the current nonexpired credential issued by the credentialing state;

(b) A copy of the statute, administrative regulation, or other official document of the issuing state which sets forth the minimum requirements for the credential;

(c) A statement from the issuing authority:

(i) That the credential is in good standing;

(ii) That there is no disciplinary action currently pending; and

(iii) Listing any formal discipline actions taken by the issuing authority with regard to the credential;

(d) A statement signed by the applicant, on a form provided by the department, submitting to the jurisdiction of the Washington state courts for the purpose of any litigation involving his or her practice as a sex offender treatment provider; and

(e) A statement signed by the applicant on a form provided by the department, that the applicant does not intend to practice the health profession for which he or she is credentialed by another state within the state of Washington without first obtaining an appropriate credential to do so from the state of Washington, except as may be authorized by Washington state law(~~;~~ and

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

(3) Underlying registration, certification, or licensure shall be maintained in good standing. If an underlying registration, certification, or licensure is not renewed or is revoked, certification as a sex offender treatment provider or affiliate sex offender treatment provider is revoked. If an underlying registration, certificate or license is suspended, the sex offender treatment provider certification is suspended. If there is a stay of the suspension of an underlying registration, certificate or license the sex offender treatment

provider program must independently evaluate the reasonableness of a stay for the sex offender treatment provider.

AMENDATORY SECTION (Amending WSR 01-14-044, filed 6/29/01, effective 7/30/01)

WAC 246-939-020 How do I register as a surgical technologist? (1) How do I obtain a registration application?

(a) Applicant may obtain an application by contacting the department. Applicants must return the completed application to be registered.

(b) Completed original applications shall be sent to the department of health.

(c) All applicants shall refer to chapter 246-12 WAC, Parts 1, 2, 10, and 11.

(2) Is there a requirement for education? ~~((a) Applicants must complete seven clock hours of AIDS education as required by RCW 70.24.270 and chapter 246-12 WAC, Part 8.~~

~~(b))~~ Registration does not require additional education.

AMENDATORY SECTION (Amending WSR 11-14-026, filed 6/24/11, effective 7/25/11)

WAC 246-940-020 Certification requirements. To qualify for certification, a candidate must:

(1) Successfully complete a three hundred hour training program approved by the secretary, that includes instruction in general animal massage techniques, kinesiology, anatomy, physiology, behavior, first-aid care and handling techniques:

(a) To practice animal massage on large animals, the three hundred hours of instruction must be related to the performance of animal massage on large animals;

(b) To practice animal massage on small animals, the three hundred hours of instruction must be related to the performance of animal massage on small animals;

(c) For certification in both small animal massage and large animal massage, the candidate must complete the training described in (a) and (b) of this subsection.

(2) Successfully complete a qualifying examination approved by the secretary:

(a) To practice animal massage on large animals, successfully complete the National Certification Examination for Equine Massage administered by the National Board of Certification for Animal Acupressure and Massage;

(b) To practice animal massage on small animals, successfully complete the National Certification Examination for Canine Massage administered by the National Board of Certification for Animal Acupressure and Massage.

(c) Candidates seeking certification in both small animal massage and large animal massage must meet all requirements in (a) and (b) of this subsection.

(3) Successfully complete the Washington state animal massage jurisprudence examination ~~((= and~~

~~(4) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8)).~~

AMENDATORY SECTION (Amending WSR 17-11-058, filed 5/16/17, effective 7/1/17)

WAC 246-940-040 Application requirements. An applicant for certification as an animal massage therapist shall submit or cause to be submitted to the department:

(1) A completed application and fee;

(2) Proof of successful completion of the training required in WAC 246-940-050 received directly from the program where the applicant completed the training;

(3) Proof of successful completion of a certification examination required in WAC 246-940-020;

(4) Proof of successful completion of the Washington state jurisprudence examination as required in WAC 246-940-020;

~~(5) ((Verification of four clock hours of AIDS education as required in WAC 246-940-020;~~

~~(6))~~ Verification from all states in which the applicant holds or has held a credential to practice animal massage, indicating that the applicant has or has not been subject to charges or disciplinary action for unprofessional conduct or impairment; and

~~((7))~~ (6) Additional documentation as required by the secretary to determine whether an applicant is qualified for certification.

AMENDATORY SECTION (Amending WSR 18-20-072, filed 9/28/18, effective 10/29/18)

WAC 246-980-040 Certification requirements. (1) To qualify for certification as a home care aide, the applicant must:

(a) Successfully complete all training required by RCW 74.39A.074(1) within one hundred twenty calendar days of the date of hire as a long-term care worker;

(b) Successfully pass the home care aide certification examination, after completing training; and

(c) Become certified within two hundred days of date of hire, or two hundred sixty days if granted a provisional certificate under RCW 18.88B.041 ~~((= and~~

~~(d) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8. This is included in the basic training requirements in WAC 388-71-0906 and 388-112A-0310)).~~

(2) An applicant for certification as a home care aide must submit to the department:

(a) A completed application for both certification and the examination on forms provided by the department;

(b) The exam fee set by the examination vendor and required fees under WAC 246-980-990; and

(c) A certificate of completion from an approved training program indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.074. The certificate of completion or other official verification may also be submitted directly from the approved instructor or training program.

(3) An applicant must submit to a state and federal background check as required by RCW 74.39A.056.

(4) An applicant exempt from certification under WAC 246-980-025(2) who voluntarily chooses to be certified must provide documentation of qualification for the exemption.

The applicant is not required to take the training required in subsection (1)(a) of this section or provide proof of training completion to the department.

WSR 21-02-004
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed December 23, 2020, 2:28 p.m., effective January 23, 2021]

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

Purpose: The agency is amending WAC 182-530-2000 to replace the list of covered generic products for the treatment of cough and cold. The new rules cover only those products with a preferred status on the apple health preferred drug list on the date a prescription is dispensed. The agency is also amending WAC 182-530-2100 to correct references to 182-530-2000 that changed as part of this rule making.

Citation of Rules Affected by this Order: Amending WAC 182-530-2000 and 182-530-2100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 20-23-121 on November 18, 2020.

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

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

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

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

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

Date Adopted: December 23, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-22-016, filed 10/25/19, effective 11/25/19)

WAC 182-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies. (1) The medicaid agency covers:

(a) Outpatient drugs, including over-the-counter (OTC) drugs, as defined in WAC 182-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 182-530-1050;

(iii) The drug is not excluded from coverage under WAC 182-530-2100;

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 182-530-7500; and

(v) The drug is prescribed by a provider with prescriptive authority. Exceptions to the prescription requirement exist for family planning and emergency contraception in (b) of this subsection.

(b) Family planning drugs, devices, and drug-related supplies per chapter 182-532 WAC and as follows:

(i) OTC family planning drugs, devices, and drug-related supplies without a prescription when the agency determines it necessary for client access and safety;

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 182-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, excluding emergency contraception, when dispensed in a one-year supply only, unless:

(A) A smaller supply is directed by the prescriber;

(B) A smaller supply is requested by the client;

(C) The pharmacy does not have adequate stock.

(c) Vitamins, minerals, and enzymes when prescribed for:

(i) Prenatal vitamins, when prescribed and dispensed to pregnant women;

(ii) A medical condition caused by a clinically documented deficiency;

(iii) A United States Preventive Services Task Force recommendation with an A or B rating;

(iv) Fluoride for clients under age twenty-one; or

(v) A clinically documented medical condition that causes vitamin, mineral, or enzyme deficiencies, and the deficiency cannot be treated through other dietary interventions.

(d) OTC drugs, vitamins, and minerals when determined by the agency to be the least costly therapeutic alternative for a medically accepted indication. All covered OTC products determined to be the least costly therapeutic alternatives for medically accepted indications will be included on the agency's published apple health preferred drug list. This subsection does not apply to products prescribed for the treatment of cough or cold symptoms. See this subsection (1) (h) of this section and WAC 182-530-2100 (1)(b)(v) for coverage of products prescribed for the treatment of cough and cold symptoms.

(e) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 182-530-2100; and

(iv) Determined by the agency that a product covered under chapter 182-543 WAC related to ((durable)) medical equipment and supplies should be available at retail pharmacies.

(f) Preservatives, flavoring, or coloring agents, only when used as a suspending agent in a compound.

(g) OTC and prescription drugs to promote tobacco/nicotine cessation.

(h) ~~((The following generic products))~~ For the treatment of cough and cold(~~(:~~

(i) ~~Dextromethorphan 15 mg/5 ml liquid or syrup;~~
 (ii) ~~Dextromethorphan/Guaifenesin 10 mg 100/5 ml liquid or syrup, including sugar-free formulations;~~
 (iii) ~~Guaifenesin 100 mg/5 ml liquid or syrup;~~
 (iv) ~~Phenylephrine 10 mg tablets;~~
 (v) ~~Phenylephrine 2.5 mg/ml liquid or syrup;~~
 (vi) ~~Pseudoephedrine 30 mg and 60 mg tablets;~~
 (vii) ~~Pseudoephedrine 15 mg/5 ml liquid or syrup; and~~
 (viii) ~~Saline 0.65% nasal spray)).~~ only those products included with a preferred status on the apple health preferred drug list (PDL), as described in WAC 182-530-4100, on the date a client's prescription is dispensed.

(2) The agency does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

AMENDATORY SECTION (Amending WSR 19-22-016, filed 10/25/19, effective 11/25/19)

WAC 182-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies. (1) The medicaid agency does not cover:

- (a) A drug that is:
 - (i) Not approved by the Food and Drug Administration (FDA); or
 - (ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.
- (b) A drug prescribed:
 - (i) For weight loss or gain;
 - (ii) For infertility, frigidity, impotency;
 - (iii) For sexual or erectile dysfunction;
 - (iv) For cosmetic purposes or hair growth; or
 - (v) For treatment of cough or cold symptoms, except as listed in WAC 182-530-2000 (1)((+)) (h).
- (c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.
- (d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.
- (e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.
- (f) A product:
 - (i) With an obsolete National Drug Code (NDC) for more than two years;
 - (ii) With a terminated NDC;
 - (iii) Whose shelf life has expired; or
 - (iv) Which does not have an eleven-digit NDC.
- (g) Over-the-counter (OTC) drugs, vitamins, and minerals, except as allowed under WAC 182-530-2000 (1)((+)) (h).

(h) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).

(i) Free pharmaceutical samples.
 (2) A noncovered drug can be requested through the exception to rule process as described in WAC 182-501-0160.

(3) If a noncovered drug is prescribed through the early and periodic screening, diagnosis, and treatment (EPSDT) process, an authorization request may be submitted indicating that the request is EPSDT related, and the request will be evaluated according to the process in WAC 182-501-0165. (See WAC 182-534-0100 for EPSDT rules.)

WSR 21-02-012
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed December 24, 2020, 9:23 a.m., effective September 1, 2021]

Effective Date of Rule: September 1, 2021.

Purpose: WAC 246-830-005, 246-830-020, 246-830-035, 246-830-037, 246-830-420, 246-830-430, 246-830-440, 246-830-475, 246-830-550, 246-830-555, 246-830-557, 246-830-560, 246-830-565, and 246-830-570, massage practitioners. The board of massage and the department of health are adopting amendments to existing sections that add new definitions, and revise: Licensing standards for out-of-state applicants; transfer programs; approval of schools; training hours; student clinic; continuing education; standards of practice; breast massage; coverage and draping; recordkeeping; and record retention. The adopted rules also create a new section for massage of the gluteal cleft and perineum.

Citation of Rules Affected by this Order: New WAC 246-830-557; and amending WAC 246-830-005, 246-830-020, 246-830-035, 246-830-037, 246-830-420, 246-830-430, 246-830-440, 246-830-475, 246-830-550, 246-830-555, 246-830-560, 246-830-565, and 246-830-570.

Statutory Authority for Adoption: RCW 18.108.085 (1) (a) and 18.108.025 (1)(a).

Other Authority: Chapter 18.108 RCW; and ESHB 1551 (2020).

Adopted under notice filed as WSR 20-14-102 on June 30, 2020.

Changes Other than Editing from Proposed to Adopted Version: Changes made from the proposed version to the adopted version are clarifying and not substantive.

WAC 246-830-420, 246-830-430, and 246-830-440 addressing initial education and training, were each amended for clarification of the student clinic requirements. The amendment also makes the language uniform in each rule.

WAC 246-830-475 addressing continuing education, was amended to correct an exemption of acceptable proof of completion for self-study.

A final cost-benefit analysis is available by contacting Megan Maxey, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4945, fax 360-236-2901, TTY 711, email megan.maxey@doh.wa.gov.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 13, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 13, Repealed 0.

Date Adopted: August 21, 2020.

Jessica Todorovich
Chief of Staff
for Umair Shah, MD, MPH
Secretary
and Heidi Williams, LMT
Board of Massage Chairperson

Chapter 246-830 WAC

MESSAGE ((PRACTITIONERS)) THERAPISTS

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-005 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

(1) "Animal" means any species normally recognized as treatable by veterinary medicine.

(2) "Animal massage therapist" means an individual licensed to practice massage therapy under chapter 18.108 RCW with additional education and training in animal massage therapy as required under this chapter and holds the animal massage therapist endorsement required by RCW 18.108.230.

(3) "Apprentice" means an individual enrolled in an apprenticeship program, and who is held to the same standards as students in massage schools or massage programs.

(4) "Apprenticeship educator and trainer" means a massage therapist licensed under chapter 18.108 RCW with at least ~~((five))~~ three current years of experience in full-time practice.

(5) "Apprenticeship program" means education and training in massage administered by an apprenticeship educator and trainer that satisfies the education and training requirements for massage set forth in this chapter.

(6) "Board" means the Washington state board of massage.

(7) "Breast massage" means the specific and deliberate manipulation of breast tissue pursuant to WAC 246-830-555. Massage of the surrounding chest and shoulder muscles such as massage of the intercostal, pectoral, or axillary muscles is not considered breast massage. ~~((Breast massage is only allowed as authorized by WAC 246-830-555.))~~

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

(9) "Direct supervision" means supervision by a faculty member who is a clinical supervisor of the massage school or massage program and is on the premises, in the student clinic and is readily available to students and clients or patients.

(10) "Evaluation" means the assessment of soft tissue in order to facilitate decision making regarding effective forms and techniques of massage, and identifying cautions and contraindications to ensure client or patient safety. Evaluation does not mean diagnosis.

(11) "Intraoral massage" means the manipulation or pressure of soft tissue inside the mouth or oral cavity for therapeutic purposes.

(12) "Linens" means sheets, blankets, towels, gowns, pillow cases, face cradle covers, and other nonimpervious fabrics used in the practice of massage.

(13) "Massage" and "massage therapy" mean a health care service involving the external manipulation or pressure of soft tissue for therapeutic purposes. Massage therapy includes techniques such as tapping, compressions, friction, reflexology, Swedish gymnastics or movements, gliding, kneading, shaking, and fascial or connective tissue stretching, with or without the aids of superficial heat, cold, water, lubricants, or salts. Massage therapy does not include diagnosis or attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of thrusting force, nor does it include genital manipulation. See WAC 246-830-550 for additional limitations on massage practice.

~~((13))~~ (14) "Massage business" means the operation of a business where massages are given.

~~((14))~~ (15) "Massage program" or "program" means education and training in massage therapy approved by the board. A massage program or program is an established area of study offered on a continuing basis.

~~((15))~~ (16) "Massage school" or "school" means an institution which has the sole purpose of offering education and training in massage therapy approved by the board.

~~((16))~~ (17) "Massage therapist" means an individual licensed as a massage therapist under chapter 18.108 RCW.

~~((17))~~ (18) "Massage transfer program" means a separate board approved program within a board approved massage program or school that allows ~~((board approved massage programs and massage schools))~~ the transfer program to accept credits and clock hours from massage schools, massage programs, colleges or universities that ~~((have))~~ may not have been approved by the board, pursuant to WAC 246-830-037.

(19) "Perineum" means the tissues between the anus and scrotum or vulva.

~~((18))~~ (20) "Secretary" means the secretary of the department of health or the secretary's designee.

~~((19))~~ (21) "Student" means an individual currently enrolled in a massage school, massage program or apprenticeship program who is practicing massage solely for the purposes of education and training as part of their current course work and who is not receiving compensation for said practice.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-020 Applications. (1) An applicant for a massage therapist license must be eighteen years of age or older and must submit to the department:

(a) A completed application on forms provided by the department;

(b) Proof of successful completion of the required education and training of a massage school, massage program, or apprenticeship program on an official transcript or school completion form sent directly from the applicant's massage school, massage program or apprenticeship program;

(c) Proof of successful completion of a board approved examination under WAC 246-830-201;

(d) Proof of successful completion of the Washington state massage jurisprudence examination;

~~(e) ((Proof of successful completion of four clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;~~

~~(f))~~ Proof of certification in American Red Cross first aid and American Heart Association CPR or the equivalent. CPR training must be in person;

~~((g))~~ ~~(f)~~ The required nonrefundable application fee in WAC 246-830-990; and

~~((h))~~ ~~(g)~~ A state criminal background check, and, if required by the department, fingerprint cards for a national or state fingerprint based background check pursuant to RCW 18.130.064(2) and chapter 246-12 WAC.

(2) The secretary may request additional supporting documentation as necessary.

(3) The secretary will not grant a license under this chapter to any person who has been convicted of violating RCW 9A.88.030, 9A.88.070, 9A.88.080, or 9A.88.090 or equivalent local ordinances within the eight years immediately preceding the date of application, except as provided in RCW 9.97.020.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-035 Licensing by endorsement for out-of-state applicants. (1) A massage therapist applicant holding a massage license in another state or foreign jurisdiction may be granted a Washington massage license if:

(a) The board determines the other state's, territory's, or foreign jurisdiction's education and training requirements are substantially equivalent to Washington's. Substantial equivalency means a course of study at a massage school or massage program that requires:

~~(i)~~ A minimum of ~~((five))~~ six hundred ~~twenty-five~~ hours of education and training, to be completed in no fewer than ~~twenty-four weeks~~ and approved by the equivalent licensing agency or agencies in the state, territory, or foreign jurisdiction in which it is located at the time of applicant's graduation; or

~~(ii)~~ A minimum of five hundred hours of education and training, and approved by the equivalent licensing agency or agencies in the state, territory, or foreign jurisdiction in which it is located at the time of applicant's graduation, at least two years of experience, and documentation of at least

twenty-four hours of continuing education within two years prior to making application.

(b) The applicant has a massage license in good standing as verified by the appropriate jurisdiction; and

(c) If there is a gap in practice of three or more years immediately prior to applying for a license by endorsement, the applicant must provide documentation of twenty-four hours of hands on ~~((delivery of massage therapy services))~~ continuing education of massage therapy for the two most recent years prior to making application.

(2) If an applicant does not meet the requirements of this section, then the applicant may fulfill the remaining education and training requirements as outlined in WAC 246-830-037.

(3) The applicant must have successfully passed one of the following examinations:

(a) Federation of State Massage Therapy Boards massage and bodywork licensing examination;

(b) National certification examination for therapeutic massage and bodywork; or

(c) A board-approved examination.

(4) The applicant must satisfy the requirements in WAC 246-830-020 (1)(a) through (h).

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-037 Transfer programs and transfer of credit or clock hours for prior education ~~((and clock hours))~~ and training. (1) A transfer program must be approved by the board prior to a massage school or massage program enrolling a transfer student through the use of transfer credits or clock hours.

(2) To qualify as a board approved transfer program, an authorized representative of the massage school or massage program must submit to the board a completed application packet provided by the department.

(3) Approval of a transfer program is valid for three years after initial approval and every five years for reapproval. The transfer program's initial approval expiration date will be aligned to the expiration date of the related massage school or massage program approval. The board may place restrictions on, or may revoke or suspend, approval of a transfer program that fails to comply with the requirements in this section or in RCW 18.108.028.

(4) Board approved massage schools or massage programs may operate transfer programs that accept an individual's credits or clock hours from other massage schools, massage programs, colleges or universities, subject to the following conditions:

(a) The massage school, massage program, college or university from where credits or clock hours are being transferred is:

(i) Accredited by a national or regional education accreditation organization;

(ii) Approved by a state authority with responsibility for oversight of educational or vocational programs; or

(iii) Approved by a state agency that regulates massage schools or massage programs and is a member of the federation of state massage therapy boards.

(b) The massage school, massage program, college or university from where credits or clock hours are being transferred provides an official transcript;

(c) Courses for which credits or clock hours are granted must be substantially equivalent in content and academic rigor to the courses and clock hours presently offered by the massage school or massage program. In order to determine substantial equivalency, the ~~((massage school or massage))~~ transfer program will evaluate the courses and clock hours and require transfer applicants pass written and practical tests administered by a board approved transfer program for each subject area listed in WAC 246-830-430 (1)(a) through (g).

~~((d))~~ (d) If components are missing or deficient from the massage school or massage program or the applicant cannot pass the required testing, the transfer program shall require ((credits or clock hours for those subjects while granting)) the applicant to enroll and successfully complete those deficient components. Transfer programs may grant partial credit as appropriate((-)); however, documentation of the massage school's or massage program's decision-making rationale must be maintained in the student's file; and

~~((e))~~ (e) Documentation of all previous formal education and training ((applicable to completion of a massage school or massage program is)), as well as the test or tests used to grant credit or clock hours must be included in each student's permanent file.

~~((2))~~ A transfer program must be approved by the board prior to a massage school or massage program enrolling a transfer student via the use of transfer credits or clock hours.

~~((3))~~ An authorized representative of the massage school or massage program must submit to the board a completed application packet provided by the department. Approval of a transfer program will follow the same process as outlined in WAC 246-830-420.

~~((4))~~ Approval of a transfer program is valid for three years after initial approval and every five years for reapproval. The board may place restrictions on or may revoke or suspend approval of a transfer program that fails to comply with the requirements in this section or in RCW 18.108.028.)

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-420 Approval of massage school, massage program, or apprenticeship program. (1) To qualify as a board approved massage school, massage program or apprenticeship program, an authorized representative of the massage school, massage program or apprenticeship program must submit to the board a completed application packet provided by the department. A completed application packet must include~~((but not be limited to))~~:

(a) A curriculum designed to meet or exceed the requirements listed in WAC 246-830-430. The following documentation must be submitted:

- (i) A table of courses offered;
- (ii) A syllabus for each course that includes course title, subject matter, course hours, all instructor(s) name(s), measurable course objectives, methods of evaluation, course schedule, and textbooks or other instructional materials;

~~((ii))~~ (ii) A sample ~~((copy of))~~ or samples of mid-term, final, or other equivalent exams for each of the following ~~((exams))~~ subjects: Anatomy and physiology, pathology, kinesiology, practicum criteria, ethics and professionalism, and laws and rules pertaining to massage;

(iv) A statement describing how a student will obtain first-aid and CPR training; and

(v) An institutional philosophy or mission statement.

(b) A plan for how the massage school, massage program or apprenticeship program will evaluate its academic standards. The following documentation must be submitted:

(i) A statement or policy on minimum standards for measuring student progress; and

(ii) Copies of policies and procedures, to include a policy on nondiscrimination.

(c) Documentation explaining how the massage school or massage program determines training and experience qualifications for faculty members. The following documentation must be submitted:

(i) A policy on minimum competency standards for instructors and a statement that all massage school, massage program or apprenticeship program instructors meet those standards;

(ii) A resume~~((s))~~ for each instructor; and

(iii) A listing of all instructors and the courses each instructor plans to teach.

(d) ~~((A))~~ The student clinic must be ~~((supervised by))~~ under the direct supervision of a clinical supervisor who is a licensed massage therapist with at least ~~((two))~~ three-years practical experience.

(i) The clinical supervisor is responsible for reviewing the health history of the student's client or patient, ~~((and must review and approve the student's massage plan))~~ reviewing and approving the student's massage plan, and observing a reasonable portion of each massage session based on the competency of the student.

(ii) A faculty member in the role of clinical supervisor must ensure a ratio of no less than one faculty member to no more than six students who are actively performing massage.

(iii) While supervising the clinic, the clinical supervisor may only supervise the students in the clinic and no other students on the premises.

(e) The following documentation must be submitted:

(i) A copy of policies pertaining to the student clinic;

(ii) A disclosure statement form provided to the client or patient;

(iii) A copy of the client or patient intake and screening form; ~~((and))~~

(iv) A copy of the client or patient feedback form; and

(v) A copy of the supervisor feedback form.

~~((e))~~ Health, sanitation, and facilities must be (f) A statement that facilities are maintained in accordance with state and local ordinances and these rules governing health and sanitation. The following documentation must be submitted:

(i) A floor plan of the facility;

(ii) A floor plan of the student clinic;

(iii) A list of equipment in the classroom;

(iv) A list of equipment in the student clinic; and

(v) A list of the library contents and computer or online resources available to students.

~~((f))~~ (g) A copy of policies on faculty and student conduct.

~~((g))~~ (h) Records must be stored in a secured location and be made available upon a student's written request. The following documentation must be submitted:

(i) A copy of a sample transcript; and

(ii) A policy on release of student records consistent with applicable law(s).

~~((h))~~ (i) Eligibility to operate a massage school or massage program. The following documentation must be submitted:

(i) Verification that the school is approved to operate in the state of Washington, or has pending approval by the workforce training and education coordinating board;

(ii) Verification that the school is licensed by private vocational education (see chapter 28C.10 RCW or Title 28B RCW); or

(iii) Verification that the program is part of a college or university that is nationally or regionally accredited.

~~((i))~~ (j) Designation of an authorized representative of the school or program.

(2) The board may conduct a site inspection of the massage school, massage program or apprenticeship program prior to granting approval.

(3) The board may grant or deny approval or grant conditional approval contingent upon changes to the application requested by the board.

(4) To maintain approval status with the board, a massage school, massage program or apprenticeship program must apply for reapproval during the third year after initial approval and during the fifth year for each reapproval thereafter. Failure to apply for renewal by the expiration date of the massage school, massage program or apprenticeship program approval will mean that the approval is expired and no longer valid.

(5) In order to maintain board approval, a massage school, massage program or apprenticeship program must:

(a) Comply with any changes in training standards and guidelines adopted by the board;

(b) Notify the board of any changes in overall curriculum plan or curriculum content changes under subsection (1)(a) of this section prior to implementation by filing an addendum. The board may grant or deny the proposed change; and

(c) Notify the board of changes in authorized representative ~~((or instructors))~~ within thirty days of such change.

(6) An apprenticeship program is limited to no more than three apprentices per apprenticeship educator or trainer, and the apprenticeship must be completed within two years.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-430 Education and training. (1) A massage school, massage program, transfer program, or apprenticeship program education and training must have a curriculum and system of education and training consistent with its particular area of practice. The education and training in massage therapy will consist of a minimum of ~~((five))~~ six

hundred twenty-five hours. An hour of education and training is defined as fifty minutes of actual instructional time. Certification in American Red Cross first aid and American Heart Association CPR or the equivalent is required. CPR training must be in person. This requirement is in addition to the ~~((five))~~ six hundred twenty-five hours of education and training in massage therapy. These ~~((five))~~ six hundred twenty-five hours are ~~((not))~~ to be completed in ~~((less than six months))~~ no fewer than twenty-four weeks and must consist of the following minimum requirements:

(a) ~~((One hundred thirty hours of anatomy, physiology, and kinesiology including palpation, range of motion, and physics of joint function. There must be a minimum of forty hours of kinesiology.~~

(b) ~~Fifty hours of pathology including indications and contraindications consistent with the particular area of practice.~~

~~((c) Two hundred sixty five hours of theory and practice of massage to include techniques, remedial movements, body mechanics of the therapist, and the impact of techniques on pathologies. A maximum of fifty of these hours may include time spent in a student clinic. Hydrotherapy must be included when consistent with the particular area of practice.~~

~~((d) Fifty five hours of clinical/business practices, at a minimum to include hygiene, recordkeeping, medical terminology, professional ethics, business management, human behavior, client or patient interaction, and state and local laws.))~~ Ninety hours of anatomy and physiology, to include orientation to the human body, and the integumentary, skeletal, fascial, muscular, nervous, cardiovascular and other body systems.

(b) Sixty hours of kinesiology to include muscle identification and palpation, location and attachment(s), actions, range of motion, and joint classification and function.

(c) Seventy hours of pathology to include general terminology and classification of diseases, the indications, contraindications, cautions and common adaptations to massage including, but not limited to, arthritis, bursitis, cancer, headaches, skin cancer and other skin conditions, diabetes, fasciitis, sprain, strain, tendinopathy, nerve compression syndromes, osteoporosis, stress, fibromyalgia and other chronic pain syndromes, common neurological diseases, autoimmune disorders, bloodborne pathogens, common cardiovascular diseases, reproductive systems, pregnancy, and any other health care issues as they relate to the practice of massage as defined in RCW 18.108.010.

(d) Two hundred sixty hours of theory, principles, and practice of massage to include history of massage, benefits and effects, techniques and strokes, body mechanics of the therapist, application methods and styles, concepts of basic research, session planning and the adaptation of techniques appropriate to stages of healing, to include the safe use of superficial heat, cold, lubricants and salts, and considerations relevant to special populations.

(e) Fifty hours of mandatory student clinic to be directly supervised as defined in WAC 246-830-005(9) and in accordance with WAC 246-830-420 (1)(d), with a ratio of no less than one instructor to no more than six students who are actively performing massage. For those education and training programs beyond six hundred twenty-five hours, in no

case may the number of student clinic hours exceed seventy-five hours.

(f) Fifty-five hours of clinical/business practices, at a minimum to include hygiene, sanitation, draping, record-keeping, billing and insurance concepts, medical terminology, business models and management, and laws and rules relevant to massage and massage businesses.

(g) Forty hours of professional ethics to include the therapeutic relationship of the massage therapist and client or patient, human behavior, communication skills, professional boundaries, standards of ethical practice, and state laws and rules related to massage and health care ethics.

(2) To receive credit in an apprenticeship program for previous education and training, this education and training must have been completed within the five-year period prior to enrollment in the apprenticeship program.

(3) ~~((A student attending a massage school, massage program, transfer program or apprenticeship program outside the state of Washington must pass a jurisprudence exam.~~

(4) A massage school, massage program, transfer program or apprenticeship program may exempt a student from curriculum requirements when the student's successful performance on an examination that the massage school, massage program, transfer program or apprenticeship program administers demonstrates that the student has attained competency in that subject area as a result of prior postsecondary learning or training.)) Only a board approved transfer program may exempt a student from curriculum requirements and grant credit or clock hours when the student's successful performance on an examination that the transfer program or apprenticeship program administers demonstrates that the student has attained competency in that subject area as a result of prior postsecondary learning or training. Any credits or clock hours granted pursuant to this subsection must be documented and retained in the student's record.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-440 Curriculum—Academic standards—Faculty—Student clinic. (1) The curriculum of the massage school, massage program, ~~((transfer program))~~ or apprenticeship program must be designed and presented to meet or exceed the required ~~((five))~~ six hundred twenty-five hours completed in no fewer than twenty-four weeks.

(2) Academic standards. The massage school, massage program, or apprenticeship program educator and trainer must regularly evaluate the quality of its instruction and have a clearly defined set of standards of competence required of its students. Promotion to each successive phase of the massage program and graduation is dependent on mastery of the knowledge and skills presented in the massage school, massage program, or apprenticeship program.

(3) Faculty. ~~((A))~~ The massage school, massage program, or apprenticeship program ((educator and trainer and) faculty ((member)) must be qualified by training and experience to give effective instruction in the subject(s) taught. ((An apprenticeship trainer and) Faculty members who ((teaches)) teach hands on courses must have a minimum of ((two)) three-years experience in the subject matter being

taught. The massage school, massage program, or apprenticeship ((trainer and faculty member should)) program shall develop and evaluate the curriculum instructional methods and facilities; student discipline, welfare, and counseling; assist in the establishment of administrative and educational policies, and scholarly and professional growth. A massage school, massage program, or apprenticeship program ((must)) shall not discriminate on the basis of sex, gender, race, age, color, religion, sexual orientation, gender expression, physical handicap, national or ethnic origin, or other basis prohibited by law in the recruitment and hiring of faculty.

(4) Student clinic ~~((optional program))~~. Any setting in which a student clinic occurs must be adequate in size, number, and resources to provide for student practice of massage on the general public. A clinic must be properly equipped rooms for consultations, massage therapy or treatment, and equipment as required in the practice of massage. A faculty member who is a massage therapist with at least ~~((two))~~ three-years of experience in massage therapy must provide direct supervision as a clinical supervisor, per WAC 246-830-420 (1)(d), and have final decisions in the massage treatment which is rendered to clients or patients by students. A faculty member in the role of a clinical supervisor must ensure a ratio of no less than one faculty member to ~~((ten))~~ no more than six students who are actively performing massage ~~((treatment))~~.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-475 Continuing education requirements. (1) To renew a license, a massage therapist must complete twenty-four hours of continuing education every two years, as provided in chapter 246-12 WAC, Part 7. Continuing education must be provided by an individual who has at least three years of professional experience in the subject area being taught. Massage therapists have a duty to ensure the continuing education they complete meets the requirements in this section.

(2) The following categories of continuing education are mandatory:

(a) A minimum of eight hours must be ~~((direct supervised massage skills training))~~ in person and directly supervised involving the participation of the direct application of massage therapy as defined in RCW 18.108.010; and

(b) A minimum of four hours must be in professional ethics, client or patient communication, professional roles and boundaries, or Washington state massage laws and ((regulations. Two of these hours must include professional roles and boundaries)) rules. Two of the four hours may be met by attending board of massage meetings in person. A maximum of one hour is allowed per board meeting; and

(c) ~~((The remaining twelve hours may be met by meeting the requirements in subsection (2) of this section.~~

~~((2))~~ Maintenance of certification in American Heart Association CPR or equivalent. A maximum of four hours is allowed per reporting period.

(3) For the purposes of this chapter, the remaining hours of continuing education ((is)) are defined as any of the fol-

lowing activities ~~((that involve direct application of))~~ reasonably related to massage therapy knowledge, skills, and business practices:

(a) Documented attendance at a local, state, national, or international continuing education class, program((-)) or conference;

(b) First aid((-CPR,)) certification or emergency related ((classes-)) courses;

(c) Self-study through the use of multimedia devices or the study of books, research materials, ((and/or)) or other publications.

~~((i) Multimedia devices. The required documentation for this activity is a letter or other documentation from the organization. A maximum of twelve hours is allowed per reporting period.~~

~~((ii) Books, research materials, and/or other publications. The required documentation for this activity is a two page synopsis of what was learned written by the licensee. A maximum of two hours is allowed)) The required documentation for this activity is a one page, single spaced, twelve point font synopsis of what was learned written by the licensee. The time spent writing the synopsis is not reportable. Two hours of credit is allowed per report, and no more than two separate reports may be submitted per reporting period((-);~~

~~(d) Teaching a course for the first time((-, not to exceed eight hours-));~~

~~(e) Business and management courses ((not to exceed eight hours.~~

~~(f) Specialized training. Training must be provided for a fee by an individual who has no less than three years of expertise in that area.~~

~~(g));~~

~~(f) Distance learning. Distance learning includes, but is not limited to, correspondence course, multimedia or webinar, print, audio((-)) or video broadcasting, audio((-)) or video teleconferencing, computer aided instruction, e-learning((-)) or on-line-learning, or computer broadcasting((-)) or webcasting. ~~((A maximum of twelve hours is allowed per reporting period.~~~~

~~(h)); or~~

~~(g) Active service on ((massage related boards or committees. A maximum of twelve hours is allowed per reporting period)) boards or participation in professional or government organizations specifically related to the practice of massage.~~

(4) A massage therapist must provide acceptable documentation of continuing education upon request or audit. Acceptable forms of documentation include, but are not limited to:

(a) Transcripts;

(b) A letter from the course instructor or the organization providing the continuing education;

(c) Certificate of attendance or completion; or

(d) Other formal documentation that includes the following:

(i) Participant's name;

(ii) Course title;

(iii) Course description;

(iv) Date or dates of course;

(v) Number of hours;

(vi) Indication of being an in-person course, self-study as referenced in subsection (3)(c) of this section, or distance learning as referenced in subsection (3)(f) of this section;

(vii) Instructor's name or sponsor organization name or names;

(viii) Instructor or sponsor contact information; and

(ix) Signature of the program sponsor or course instructor. The self-study allowed in subsection (3)(c) of this section is exempt from this requirement.

(5) Massage therapists who maintain an active status Washington state massage license must meet all continuing education requirements regardless of whether they reside or practice in Washington state.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-550 Standards of practice—Limitations. (1) It is not consistent with the standard of practice for a massage therapist to touch the following body parts on a client or patient except where specifically noted:

(a) ((Gluteal cleft distal to the coccyx, anus and rectum;

(b) Inside the mouth unless an intraoral endorsement has been issued;

(c) Penis;

(d) Prostate;

(e) Scrotum;

(f) Vagina, to include:

(i) Intravaginal;

(ii) Labia (majors and minors);

(iii) Clitoris;

(iv) Urethra; or)) The gluteal cleft (space distal to the coccyx to the anus) and perineum unless in accordance with WAC 246-830-557. For the purpose of this section and WAC 246-830-557, the perineum is defined as the tissues between the anus and scrotum or vulva;

(b) Anus or inside the rectum;

(c) Inside the urethra;

(d) Penis and scrotum;

(e) Vulva to include labia (major and minor), clitoris, bulb of vestibule, vulval vestibule, urinary meatus and the vaginal opening;

(f) Inside the vagina;

(g) Breasts, unless in accordance with WAC 246-830-555; or

(h) Inside the mouth unless an intraoral endorsement has been issued in accordance with WAC 246-830-490.

~~(2) ((A massage therapist must maintain evidence of the completion of at least sixteen specialized in-person contact hours of education and training if they are performing massage in the perineal area in addition to obtaining prior written and verbal informed consent. This written consent may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed.~~

~~(3)) A massage therapist ((must)) shall not engage in sexual misconduct as described in WAC 246-16-100. Sexual misconduct will constitute grounds for disciplinary action.~~

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-555 Breast massage. (1) Prior to performing breast massage, a massage therapist must:

(a) Acquire ~~((a))~~ prior signed or initialed written and verbal informed consent from the client or patient. If the client or patient is under eighteen years of age, prior written consent must be obtained from a parent or legal guardian of the client or patient. The written consent for breast massage may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed. The written consent must:

(i) ~~((Be maintained with the client or patient's records;))~~ Be documented and maintained with the client or patient records per WAC 246-830-565 and 246-830-570;

(ii) Include a statement that the client or patient may discontinue the treatment at any time for any reason; and

(iii) ~~((If the client or patient is under eighteen years of age, prior written consent must be obtained from a parent or legal guardian; and~~

~~(iv)))~~ Include a statement that the client or patient has the option to have a witness present, and that the witness must be provided by the client or patient.

(b) Use appropriate draping techniques as identified in WAC 246-830-560.

(2) In addition to the requirements identified in subsection (1) of this section, a massage therapist must maintain evidence of the completion of at least sixteen hours of specialized in-person education and training in breast massage beyond the minimum competencies. Education and training in breast massage includes, but is not limited to ~~((:))~~, breast anatomy and physiology, pathology, indications, contraindications, cautions, therapeutic treatment techniques, draping, appropriate therapist-client or therapist-patient boundaries, expected outcomes, and client or patient safety related to breast massage.

(3) In addition to the requirements in subsections (1) and (2) of this section, prior to performing a massage of the breast that includes the nipples and ((areolas)) areolae, a massage therapist must obtain ~~((additional))~~ documentation as follows:

(a) A written prescription or referral from a licensed medical health care provider for this specific treatment; or

(b) ~~((An additional))~~ Prior signed or initialed written and verbal informed consent from the client or patient or from the parent or legal guardian if the client or patient is under eighteen years of age for massage of breast that includes the nipples and ((areolas)) areolae. This written consent may be included within ~~((an overall general consent to))~~ the consent for breast massage document ~~((, if clearly delineated and either specifically initialed or signed)).~~

NEW SECTION

WAC 246-830-557 Massage of the gluteal cleft or perineum. (1) A massage therapist may massage the gluteal cleft from distal to the coccyx to the anus, and the perineum, after meeting the requirements in subsections (3), (4), and (5) of this section.

(2) For the purpose of this section and WAC 246-830-550, the perineum is defined as the tissues between the anus and scrotum or vulva. Massage of the perineum does not include massage of any areas of the body listed in WAC 246-830-550 (1)(b) through (f).

(3) A massage therapist performing massage of the body parts listed in subsection (1) of this section must maintain evidence of the completion of at least sixteen hours of specific in-person education and training in massage of the specified areas beyond the minimum competencies. The education and training for massage of the body parts listed in subsection (1) of this section includes, but is not limited to, indications, contraindications, therapeutic treatment techniques, expected outcomes, client or patient safety, client or patient consent, client or patient communication, draping techniques, sanitation, and ethical responsibilities related to massaging the body parts listed in subsection (1) of this section.

(4) Prior to performing massage of the body parts listed in subsection (1) of this section, a massage therapist must obtain signed or initialed written and verbal informed consent from the client or patient. If the client or patient is under eighteen years of age, prior written consent must be obtained from a parent or legal guardian of the client or patient. This written consent may be included within the consent to massage document, if clearly delineated. The written consent must:

(a) Be maintained with the client or patient records;

(b) Include a statement that the client or patient may discontinue the treatment at any time for any reason;

(c) Include a statement that the client or patient has the option to have a witness present, and that the witness must be provided by the client or patient; and

(d) Provide a therapeutic rationale for massaging the body parts listed in subsection (1) of this section that is acknowledged by the client or patient.

(5) A massage therapist must use appropriate draping techniques as identified in WAC 246-830-560 with the exception of clients or patients who remain clothed.

(6) A massage therapist performing massage of the body parts listed in subsection (1) of this section must use hygienic, safe, and sanitary practices, including:

(a) Wearing gloves during treatment and training that involves massage of the body parts listed in subsection (1) of this section unless the treatment or training is provided over clothing or draping that provides a barrier to transmission of biologically hazardous material and infectious disease;

(b) Using fresh gloves for every client or patient during treatment and training that involves massage of the body parts listed in subsection (1) of this section unless the treatment or training is provided over clothing or draping that provides a barrier to transmission of biologically hazardous material and infectious disease; and

(c) Gloves that have been used for treatment and training that involves massage of the body parts listed in subsection (1) of this section must not be reused for any other purpose.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-560 Coverage and draping. (1) A massage therapist must:

(a) Allow a client or patient privacy to dress or undress except as may be necessary in emergencies or custodial situations; and

(b) Always provide the client or patient a gown or draping except as may be necessary in emergencies.

(2) Massage therapists must use safe ~~((and))~~, functional, and hygienic coverage and draping practices that comply with WAC 246-830-500 during the practice of massage when the client or patient is disrobed. The drape~~((s))~~ or drapes must be sufficient to ensure the genitals and the gluteal cleft distal to the coccyx, anus and rectum are not exposed, and the breast area is not exposed except as allowed in subsections (3) and (4) of this section. Safe ~~((and))~~, functional, and hygienic coverage and draping means:

(a) The massage therapist explains, maintains and respects coverage and draping boundaries; ~~((and))~~

(b) Massage or movement of the body does not expose genitals or gluteal cleft distal to the coccyx, anus and rectum, or does not expose the breast area except as allowed in subsections (3) and (4) of this section; and

(c) All linens that are used with the client or patient are kept and maintained in accordance with WAC 246-830-500.

(3) With prior signed or initialed written~~((;))~~ and verbal~~((, and signed))~~ informed consent ~~((of))~~ from the client or patient, the gluteal cleft and breast drapes may be temporarily moved in order to perform therapeutic treatment of the area consistent with WAC 246-830-550, 246-830-555, and 246-830-557. In addition, with informed and written consent, a client or patient may choose to have their upper torso undraped during the entire massage.

(4) If variations to this coverage and draping rule occur, a massage therapist must:

(a) Maintain evidence of education and training in specific modalities that require variations in coverage and draping;

(b) Receive voluntary and informed consent of the client or patient prior to any variation of coverage or draping; and

(c) Document in the client's or patient's record the rationale for any variation of coverage or draping.

(5) Any written consent required by this section may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-565 Recordkeeping. (1) A massage therapist providing professional services to a client or patient must document services provided. Documentation should be appropriate to the venue, the type and complexity of those services and, when applicable, in sufficient detail to support and enable anticipated continuity of care. The documentation must include:

(a) Client or patient name and contact information or name and contact information of a parent or guardian if a client or patient is ~~((a minor))~~ under eighteen years of age;

(b) Age of client or patient;

(c) Health history sufficient to ascertain if there are cautions or contraindications to safe application of massage therapy, and an update of the current health status at each session;

(d) Date massage therapy is provided and the duration of treatment;

(e) The types of techniques and modalities applied;

(f) The location or areas of the body that received massage therapy;

(g) Written informed consent to treat. A written consent is considered valid for one year unless revoked;

(h) If breast massage is performed, an additional written consent to treat per WAC 246-830-555, and documentation of a therapeutic rationale;

(i) If breast massage ~~((of))~~ that includes the nipples and ~~((areolas are))~~ areolae is involved, documentation of the prescription or referral per WAC 246-830-555 (3)(a), or an additional written consent to treat per WAC 246-830-555 (3)(b);

~~((Documentation of any written consent or any modification in coverage and draping as required by WAC 246-830-560; and~~

~~((If performing massage of the gluteal cleft or perineum, an additional written and verbal informed consent to treat is required to detail that the client or patient has a clear understanding of the therapeutic rationale, treatment plan, and areas to be massaged for that region per WAC 246-830-557(4);~~

~~((Documentation of any written consent or any modification in coverage and draping as required by WAC 246-830-560; and~~

~~((For massage therapy where the focus is on treating a health condition, the following additional information is required:~~

~~((Symptoms, for example, pain, loss of function, and muscle stiffness;~~

~~((Evaluation and findings, for example, movement, posture, palpation assessment and findings;~~

~~((Outcome measures, for example, improvement in symptoms, movement, posture, palpation, and function; and~~

~~((Treatment plan for future sessions~~((; and~~~~

~~((If performing massage in the perineal area, an additional written and verbal informed consent to treat per WAC 246-830-550(2)).~~

(2) Client or patient records must be legible, permanent, and recorded within twenty-four hours of treatment. Documentation that is not recorded on the date of service must designate both the date of service and the date of the chart note entry. Corrections or additions to the client's or patient's records must be corrected by a single line drawn through the text and initialed so the original entry remains legible. In the case of computer-organized documentation, unintended entries may be identified and corrected, but must not be deleted from the record once the record is signed and completed or locked. Errors in spelling and grammar may be corrected and deleted.

(3) Correspondence relating to any referrals by other health care providers concerning the diagnosis, evaluation or

treatment of the client or patient must be retained in the client or patient record.

(4) Client or patient records should clearly identify the massage therapist who is the provider of services by name and signature or electronic signature and date of service.

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-570 Record retention. (1) ~~((A))~~ Massage therapist ((who treats)) records for clients or patients eighteen years of age and older must ((keep client or patient records)) be retained by, or be otherwise accessible to the massage therapist for at least three years from the date of last treatment.

(2) ~~((A))~~ Massage therapist ((who treats)) records for clients or patients under the age of eighteen years old must ((keep client or patient records)) be retained by, or be otherwise accessible to the massage therapist for at least three years after the client or patient reaches eighteen years old.

(3) ~~((A massage therapist must also comply with record retention requirements of chapter 70.02 RCW.))~~ The record retainer of the massage therapist records for clients or patients shall comply with record retention requirements of chapter 70.02 RCW, Medical records—Health care information access and disclosure.

(4) All records must be secured with properly limited access in compliance with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act (HIPAA).

(5) After the retention period, ~~((the massage therapist may dispose of the record))~~ records may be disposed of pursuant to this subsection. Disposal must be done in a secure and confidential manner in compliance with chapter 70.02 RCW and HIPAA and must include as appropriate:

- (a) Shredding;
- (b) Deleting, erasing, or reformatting electronic media;

~~((and))~~ or

(c) Rendering other readable forms of media ((that are defaced or rendered)) unusable or unreadable.

(6) Nothing in this section shall be intended to infringe upon any rights or remedies related to unfair trade practices as those found in chapter 19.86 RCW, the Unfair Business Practices Act.

(7) A massage therapist will not be in violation of subsections (1) and (2) of this section if the massage therapist is unable to access the records after a good faith attempt has been made to obtain the records.

bears through a pelt check-in process conducted by department staff.

Staff recommendation:

- Standardize season dates.
- Clarify language associated with spring bear check-in.
- Reduce permit numbers on the Long Beach hunt by two.
- Remove Weyerhaeuser-Columbia timber lands from the North Skagit hunt area because they are not allowing access.

Citation of Rules Affected by this Order: Amending WAC 220-415-080.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020.

Adopted under notice filed as WSR 20-20-098 on October 5, 2020.

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

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

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

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

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

Date Adopted: December 28, 2020.

Larry Carpenter, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 19-22-061, filed 11/5/19, effective 12/6/19)

WAC 220-415-080 ((2020)) 2021 Spring black bear special permits. It is unlawful to fail to comply with the provisions of this section. A violation of this section is punishable under RCW 77.15.410, 77.15.245, or 77.15.280, depending on the circumstances of the violation.

Who May Apply: Anyone with a valid Washington big game license, which includes black bear as a species option.

Hunt Areas, Permit Levels, and Season Dates for Each License Year:

**WSR 21-02-015
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-270—Filed December 28, 2020, 10:09 a.m., effective January 28, 2021]

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

Purpose: The proposed amendments are to align season dates, adjust permit numbers where needed, and clarify information about biological samples collected from harvested

| Hunt Name | Hunt Area | Permits | Season Dates |
|------------------|---|-----------------------------|--|
| Sherman | GMU 101 Note: Mandatory bear identification test required. | 50 | April ((+)) <u>15</u> - June 15 |
| Kelly Hill | GMU 105 Note: Mandatory bear identification test required. | 50 | April ((+)) <u>15</u> - June 15 |
| Douglas | GMU 108 Note: Mandatory bear identification test required. | 40 | April ((+)) <u>15</u> - June 15 |
| Aladdin | GMU 111 Note: Mandatory bear identification test required. | 50 | April ((+)) <u>15</u> - June 15 |
| 49 Degrees North | GMU 117 Note: Mandatory bear identification test required. | 100 | April ((+)) <u>15</u> - June 15 |
| Huckleberry | GMU 121 | 100 | April ((+)) <u>15</u> - June 15 |
| Blue Creek | GMU 154 | 18 | April 15 - June 15 |
| Dayton | GMU 162 | 18 | April 15 - June 15 |
| Tucannon | GMU 166 | 5 | April 15 - June 15 |
| Wenaha | GMU 169 | 60 | April 15 - June 15 |
| Mt. View | GMU 172 | 24 | April 15 - June 15 |
| Lick Creek | GMU 175 | 18 | April 15 - June 15 |
| Peola | GMU 178 | 5 | April 15 - June 15 |
| Couse | GMU 181 | 5 | April 15 - June 15 |
| Grande Ronde | GMU 186 | 5 | April 15 - June 15 |
| Kitsap | GMU 627 | 5 | April 15 - ((May 31)) <u>June 15</u> |
| Mason | GMU 633 | 5 | April 15 - ((May 31)) <u>June 15</u> |
| Bear River | GMU 681 | 20 | April 15 - ((May 31)) <u>June 15</u> |
| Long Beach | GMU 684 | ((12)) <u>10</u> | April 15 - ((May 31)) <u>June 15</u> |
| North Skagit | That portion of GMU 418 that is designated as the hunt area by DNR, Sierra Pacific, (Weyerhaeuser-Columbia Timber Lands,) and Grandy Lake Timber company. Note: Mandatory bear identification test required. | 30 | April 15 - June 15 |
| Copalis | GMU 642, 648, and 638 (excluding U.S. Forest Service lands). | 50 | April 15 - June 15 |

Bag Limit: One black bear per black bear special permit season.

License Required: A valid big game hunting license, which includes black bear as a species option, is required to apply for a spring black bear special permit. One black bear transport tag is included with a big game hunting license that has black bear as a species option.

Hunting Method: Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting black bear. The use of dogs or bait to hunt black bear is prohibited statewide.

Other Requirements: Hunters that are selected to hunt in GMUs located in grizzly bear recovery areas, as identified by the department, must successfully complete the annual WDFW online bear identification test with a passing score (80% or higher) or carry proof that they have passed an equivalent test from another state. The WDFW test may be taken repeatedly until a passing score is achieved. All hunters must carry proof of passing a bear identification test while hunting in the GMUs identified by the department.

Harvest Check, Submitting Biological Samples and Bear Teeth: All successful bear hunters must validate (notch) their bear tag consistent with WAC 220-413-020, notify the

department within 72 hours of kill (excluding legal state holidays), provide the hunter's name, date and location of kill, and sex of animal. The unfrozen raw pelt, with evidence of sex attached, and the first premolar must be presented to an authorized department employee for ~~((sealing))~~ inspection within 5 days of notification of kill. All permit hunters must comply with harvest reporting and submission of biological samples as described above. Failure to comply with the submission of biological samples is a misdemeanor pursuant to RCW 77.15.280.

WSR 21-02-017

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed December 28, 2020, 10:47 a.m., effective January 28, 2021]

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

Purpose: WAC 246-853-230 and 246-854-080, the board of osteopathic medicine and surgery (board) repealed AIDS education and training requirements for osteopathic physicians and osteopathic physician assistants. The board repealed WAC 246-853-230 and 246-854-080 [(2)](d). The board repealed these requirements as a result of ESHB 1551 Modernizing the control of certain communicable diseases, chapter 76, Laws of 2020.

Citation of Rules Affected by this Order: Repealing WAC 246-853-230; and amending WAC 246-854-080 [(2)](d).

Statutory Authority for Adoption: RCW 18.57.005.

Adopted under notice filed as WSR 20-18-003 on August 20, 2020.

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

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

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

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

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

Date Adopted: August 20, 2020.

Roger Ludwig, D.O.
Chair

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-853-230 HIV/AIDS education and training.

AMENDATORY SECTION (Amending WSR 15-03-013, filed 1/8/15, effective 2/8/15)

WAC 246-854-080 Osteopathic physician assistant—Requirements for licensure. (1) Individuals applying to the board for licensure as an osteopathic physician assistant must have graduated from an accredited board approved physician assistant program and successfully passed the NCCPA examination.

(2) An applicant for licensure as an osteopathic physician assistant must submit to the board:

(a) A completed application on forms provided by the board;

(b) Proof the applicant has completed an accredited board approved physician assistant program and successfully passed the NCCPA examination;

(c) All applicable fees as specified in WAC 246-853-990; and

(d) ~~((Proof of completion of four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8; and~~ ~~(e)))~~ Other information required by the board.

(3) The board will only consider complete applications with all supporting documents for licensure.

(4) An osteopathic physician assistant may not begin practicing without written board approval of the delegation agreement.

WSR 21-02-020

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 28, 2020, 11:40 a.m., effective January 1, 2021]

Effective Date of Rule: January 1, 2021.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The updated forest land values in WAC 458-40-660 are required by RCW 84.33.140 to be updated on or before December 31 for use the following year. RCW 84.33.091 requires the stumpage values in WAC 458-40-660 to be updated on or before December 31 for use the following January through June 30.

Purpose: WAC 458-40-540 contains the forest land values used by county assessors for property tax purposes. This rule is being revised to: (1) Provide updated forest land values for the period from January 1, 2021, through December 31, 2021; (2) update the western Washington logging conditions definitions for Class 1 and Class 2 in the harvest adjustment table for stumpage value areas 1, 2, 3, 4, 5, and 9 to reflect a new method of cable-assist or tethered logging; (3) update the dollar adjustment per mbf net Scribner scales for logs yarded from stump to landing by helicopter to two hundred from one hundred forty-five for all stumpage value areas; and (4) update the dollar adjustment per mbf net Scribner scale for eastern Washington Class 3 logging conditions (where the majority of the harvest unit has rough, broken ground with slopes over sixty percent; numerous rock outcrops and bluffs) in the harvest adjustment table for stumpage value areas 6 and 7 from seventy-five to eighty-five.

WAC 458-40-660 contains the stumpage values used by timber harvesters to calculate the timber excise tax; this rule is being revised to provide updated stumpage values for the period from January 1 through June 30, 2021.

Citation of Rules Affected by this Order: Amending WAC 458-40-540 Forest land values—2021, and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Other Authority: RCW 84.33.091, 84.33.140.

Adopted under notice filed as WSR 20-22-103 on November 3, 2020.

A final cost-benefit analysis is available by contacting Jennifer Arnold, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1574, fax 360-534-1606, TTY 1-800-451-7985, email JenniferA@dor.wa.gov, website dor.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: December 28, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-02-053, filed 12/23/19, effective 1/1/20)

WAC 458-40-540 Forest land values—((2020)) 2021. The forest land values, per acre, for each grade of forest land for the ((2020)) 2021 assessment year are determined to be as follows:

| LAND GRADE | OPERABILITY CLASS | ((2020)) 2021 VALUES PER ACRE |
|------------|-------------------|-------------------------------|
| 1 | 1 | \$218 |
| | 2 | 216 |
| | 3 | 202 |
| | 4 | 148 |
| 2 | 1 | 186 |
| | 2 | 179 |
| | 3 | 172 |
| | 4 | 122 |

| LAND GRADE | OPERABILITY CLASS | ((2020)) 2021 VALUES PER ACRE |
|------------|-------------------|-------------------------------|
| 3 | 1 | 144 |
| | 2 | 140 |
| | 3 | 138 |
| | 4 | 106 |
| 4 | 1 | 112 |
| | 2 | 107 |
| | 3 | 106 |
| | 4 | 81 |
| 5 | 1 | 81 |
| | 2 | 71 |
| | 3 | 70 |
| | 4 | 50 |
| 6 | 1 | 41 |
| | 2 | 39 |
| | 3 | 39 |
| | 4 | 37 |
| 7 | 1 | 18 |
| | 2 | 18 |
| | 3 | 17 |
| | 4 | 17 |
| 8 | 1 | 1 |

AMENDATORY SECTION (Amending WSR 20-14-067, filed 6/26/20, effective 7/1/20)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((July 1)) January 1st through ((December 31, 2020)) June 30, 2021:

Washington State Department of Revenue

WESTERN WASHINGTON STUMPAGE VALUE TABLE

((July)) January 1 through ((December 31, 2020)) June 30, 2021

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Starting January 1, 2019, there are no Haul Zone adjustments.

| Species Name | Species Code | SVA | | | |
|----------------------------------|-----------------------|--|-------------------------|---|-----------------------|
| | | (Stumpage Value Area) | Stumpage Values | | |
| Douglas-fir ⁽²⁾ | DF | 1 | \$((358)) <u>391</u> | | |
| | | 2 | ((447)) <u>453</u> | | |
| | | 3 | ((452)) <u>483</u> | | |
| | | 4 | ((471)) <u>511</u> | | |
| | | 5 | ((453)) <u>465</u> | | |
| | | 9 | ((344)) <u>377</u> | | |
| | | Western Hemlock and Other Conifer ⁽³⁾ | WH | 1 | ((199)) <u>226</u> |
| | | | | 2 | ((254)) <u>290</u> |
| | | | | 3 | ((256)) <u>389</u> |
| 4 | ((296)) <u>320</u> | | | | |
| 5 | ((258)) <u>255</u> | | | | |
| Western Red-cedar ⁽⁴⁾ | RC | 1-5 | ((899)) <u>932</u> | | |
| | | 9 | ((885)) <u>918</u> | | |
| Ponderosa Pine ⁽⁵⁾ | PP | 1-5 | ((167)) <u>158</u> | | |
| | | 9 | ((153)) <u>144</u> | | |
| Red Alder | RA | 1-5 | ((418)) <u>343</u> | | |
| | | 9 | ((404)) <u>329</u> | | |
| Black Cottonwood | BC | 1-5 | ((29)) <u>1</u> | | |
| | | 9 | ((15)) <u>1</u> | | |
| Other Hardwood | OH | 1-5 | ((254)) <u>159</u> | | |
| | | 9 | ((237)) <u>145</u> | | |

| Species Name | Species Code | SVA | |
|--|--------------|-----------------------|-------------------------|
| | | (Stumpage Value Area) | Stumpage Values |
| Douglas-fir Poles & Piles | DFL | 1-5 | ((786)) <u>798</u> |
| | | 9 | ((772)) <u>784</u> |
| Western Red-cedar Poles | RCL | 1-5 | ((1301)) <u>1459</u> |
| | | 9 | ((1287)) <u>1445</u> |
| Chipwood ⁽⁶⁾ | CHW | 1-5 | ((9)) <u>5</u> |
| | | 9 | ((7)) <u>3</u> |
| RC Shake & Shingle Blocks ⁽⁷⁾ | RCS | 1-9 | 301 |
| | | | |
| Posts ⁽⁸⁾ | LPP | 1-9 | 0.35 |
| DF Christmas Trees ⁽⁹⁾ | DFX | 1-9 | 0.25 |
| Other Christmas Trees ⁽⁹⁾ | TFX | 1-9 | 0.50 |

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.

(4) Includes Alaska-Cedar.

(5) Includes all Pines in SVA 1-5 & 9.

(6) Stumpage value per ton.

(7) Stumpage value per cord.

(8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.

(9) Stumpage value per lineal foot.

Washington State Department of Revenue

EASTERN WASHINGTON STUMPAGE VALUE TABLE

((July)) January 1 through ((December 31, 2020)) June 30, 2021

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Starting January 1, 2019, there are no Haul Zone adjustments.

| Species Name | Species Code | SVA | |
|--|--------------|-----------------------|-------------------------|
| | | (Stumpage Value Area) | Stumpage Values |
| Douglas-fir ⁽²⁾ | DF | 6 | \$((225)) <u>233</u> |
| | | 7 | ((239)) <u>247</u> |
| Western Hemlock and Other Conifer ⁽³⁾ | WH | 6 | ((200)) <u>204</u> |
| | | 7 | ((214)) <u>218</u> |

| Species Name | Species Code | SVA (Stumpage Value Area) | Stumpage Values |
|--|--------------|---------------------------|-----------------------------|
| Western Red-cedar ⁽⁴⁾ | RC | 6 | ((719)) 704 |
| | | 7 | ((733)) 718 |
| Ponderosa Pine ⁽⁵⁾ | PP | 6 | ((153)) 144 |
| | | 7 | ((167)) 158 |
| Other Hardwood | OH | 6 | ((9)) 4 |
| | | 7 | 18 |
| Western Red-cedar Poles | RCL | 6 | ((1370)) 1442 |
| | | 7 | ((1384)) 1456 |
| Chipwood ⁽⁶⁾ | CHW | 6 | 1 |
| | | 7 | 2 |
| Small Logs ⁽⁶⁾ | SML | 6 | ((47)) 16 |
| | | 7 | ((49)) 18 |
| RC Shake & Shingle Blocks ⁽⁷⁾ | RCS | 6-7 | 301 |
| | | | |
| Posts ⁽⁸⁾ | LPP | 6-7 | 0.35 |
| DF Christmas Trees ⁽⁹⁾ | DFX | 6-7 | 0.25 |
| Other Christmas Trees ⁽⁹⁾ | TFX | 6-7 | 0.50 |

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine in SVA 6-7.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

- (a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.
- (b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.
- (c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment

class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ~~((July 1))~~ January 1st through ~~((December 31, 2020))~~ June 30, 2021:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 9
~~((July))~~ January 1 through ~~((December 31, 2020))~~ June 30, 2021

| Type of Adjustment | Definition | Dollar Adjustment Per Thousand Board Feet Net Scribner Scale |
|-------------------------------|---|--|
| I. Volume per acre | | |
| Class 1 | Harvest of 30 thousand board feet or more per acre. | \$0.00 |
| Class 2 | Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre. | -\$15.00 |
| Class 3 | Harvest of less than 10 thousand board feet per acre. | -\$35.00 |
| II. Logging conditions | | |
| Class 1 | Ground based logging a majority of the unit using tracked or wheeled ((vehicles)) <u>equipment</u> or draft animals. | \$0.00 |

| Type of Adjustment | Definition | Dollar Adjustment Per Thousand Board Feet Net Scribner Scale |
|--------------------------------|---|--|
| Class 2 | ((Cable)) Logging a majority of the unit: Using an overhead system of winch-driven cables and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables. | -\$85.00 |
| Class 3 | Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products. | - \$(145.00) 200.00 |
| III. Remote island adjustment: | | |
| | For timber harvested from a remote island | -\$50.00 |
| IV. Thinning | | |
| Class 1 | A limited removal of timber described in WAC 458-40-610 (28) | -\$100.00 |

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
 ((July)) January 1 through ((December 31, 2020)) June 30, 2021

| Type of Adjustment | Definition | Dollar Adjustment Per Thousand Board Feet Net Scribner Scale |
|--------------------------------|---|--|
| I. Volume per acre | | |
| Class 1 | Harvest of more than 8 thousand board feet per acre. | \$0.00 |
| Class 2 | Harvest of 8 thousand board feet per acre and less. | -\$8.00 |
| II. Logging conditions | | |
| Class 1 | The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers. | \$0.00 |
| Class 2 | The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers. | -\$50.00 |
| Class 3 | The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs. | - \$(75.00) 85.00 |
| Class 4 | Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products. | - \$(145.00) 200.00 |
| Note: | A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue. | |
| III. Remote island adjustment: | | |
| | For timber harvested from a remote island | -\$50.00 |

TABLE 11—Domestic Market Adjustment

| Class | Area Adjustment Applies | Dollar Adjustment Per Thousand Board Feet Net Scribner Scale |
|-------|-------------------------|--|
|-------|-------------------------|--|

SVAs 1 through 5 only: \$0.00
 Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass,** has a \$0/ton stumpage value.

WSR 21-02-022
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed December 28, 2020, 12:41 p.m., effective December 31, 2020]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-04 issue of the Register.

WSR 21-02-023
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed December 28, 2020, 1:02 p.m., effective December 31, 2020]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-03 issue of the Register.

WSR 21-02-024
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Filed December 28, 2020, 1:15 p.m., effective January 28, 2021]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-03 issue of the Register.

WSR 21-02-029
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed December 28, 2020, 5:21 p.m., effective January 28, 2021]

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

Purpose: The department is adopting rules related to suspension periods for driver's licenses. The amendment will update the department's policy on suspension periods related to fraud. The amendment will allow for discretion as it relates to suspension periods, from a zero day suspension to three hundred sixty-four days, depending on the type of identity fraud, type of credential involved, driver status of the individual committing fraud, etc. This change will support an internal process already being used by driver and vehicle investigators.

Citation of Rules Affected by this Order: Amending WAC 308-104-075 Driver's licenses—Prohibited practices—Suspension, cancellation, or denial period.

Statutory Authority for Adoption: RCW 46.20.291.

Adopted under notice filed as WSR 20-23-098 on November 17, 2020.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 28, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-087, filed 7/31/06, effective 8/31/06)

WAC 308-104-075 Driver's licenses—Prohibited practices—Suspension, cancellation, or denial period. (1) The department (~~shall~~) may suspend, cancel, or deny all driving privileges of a person who has been convicted of or determined by the department to have committed one of the prohibited practices relating to drivers' licenses listed in RCW 46.20.0921 for a period (~~of not less than sixty consecutive days and not more than~~) up to three hundred sixty-four consecutive days. The following terms of suspension shall be determined by the department:

(a) Up to sixty days for identity theft or fraud with no connection to traffic safety;

(b) Ninety days for identity theft or fraud related to avoiding a revocation or suspension with no connection to traffic safety;

(c) One hundred eighty days for identity theft or fraud related to avoiding a revocation or suspension associated with traffic safety, or for separate additional offenses with no connection to traffic safety; or

(d) Three hundred sixty-four days for identity theft or fraud related to avoiding a revocation or suspension with a direct connection to traffic safety.

(2) For purposes of RCW 46.20.0921 (1)(e), an application for a commercial driver's license includes the application for a driver's license under RCW 46.20.091 and the application for a commercial driver's license under RCW 46.25.070.

WSR 21-02-030
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed December 28, 2020, 5:39 p.m., effective January 28, 2021]

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

Purpose: The department is filing to adopt an amendment to WAC 308-104-014 which will update the department's policy and procedure for processing applications for driver licenses, identification cards and instruction permits. The amendment will end the department's collection of an applicant's maiden name. There is no longer a need to collect this information and it is not needed to establish a person's identity. Also see Governor's Executive Order 17-01.

Citation of Rules Affected by this Order: Amending WAC 308-104-014 Application for driver's license or identification card.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.119.

Adopted under notice filed as WSR 20-23-090 on November 17, 2020.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 28, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-10-030, filed 4/25/18, effective 5/19/18)

WAC 308-104-014 Application for driver's license or identicard. A person applying for a driver's license, instruction permit, or identification card must provide the following information:

(1)(a) The person's full name, current mailing and Washington residential address, and telephone number;

(b) A person applying for an identicard who does not have a permanent primary resident address may be issued an identicard at the cost of production if the person:

(i) Is under the age of eighteen;

(ii) Applies in person;

(iii) Attests to a lack of permanent primary resident address at each application; and

(iv) Provides a temporary mailing address where the identicard can be mailed.

(2) The person's physical description, including sex, height, weight, and eye color;

(3) The person's date of birth;

(4)(a) The person's Social Security number, if the Social Security number is required by state or federal law. If the person's Social Security number is not required by state or federal law, the person may voluntarily provide his or her Social Security number in order to assist the department in verifying identity;

(b) If the Social Security number is required by state or federal law and the person has not been issued a Social Security number, the person must submit a sworn affidavit, under penalty of perjury, stating that he or she does not have a Social Security number. The department may require that a person who is applying for a license and who has signed an affidavit under this subsection provide additional documentation satisfactory to the department establishing the person's Washington residence address;

(5) ~~((The person's mother's maiden name and))~~ Whether the person is one of multiple siblings born at the same time;

(6) If the application is for a driver's license or instruction permit, whether the person has been previously licensed, where such license was issued, and under what name;

(7) If the application is for a driver's license or instruction permit, whether the person has ever had his or her driver's license or driving privilege suspended, revoked, canceled, disqualified, withheld, or denied, and if so, where and when such driving sanction was imposed and the reason for such action;

(8) If the application is for a driver's license or instruction permit, whether the person has had a mental or physical condition or is taking any medication which could impair his or her ability to operate a motor vehicle;

(9) If the application is for a driver's license and the person is under the age of eighteen, a declaration by the person's parent, guardian, or employer that he or she has read and understands the intermediate license restrictions, and a declaration by the person that he or she has read and understands the intermediate license restrictions;

(10) The person's signature and, if the application is for a driver's license or instruction permit and the person is under the age of eighteen, the signature of the person's custodial parent or legal guardian; and

(11) Any supplementary documentation as may be necessary to verify any of the information required by this section.

WSR 21-02-034

PERMANENT RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Filed December 29, 2020, 8:54 a.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: The commissioner is adopting rules regarding health care benefit managers to ensure implementation of registration, associated filings, and regulation as provided for in 2SSB 5601 (chapter 240, Laws of 2020), which has been codified in chapter 48.200 RCW. In addition to adding new sections, the commissioner is amending existing WAC and repealing older WAC.

Citation of Rules Affected by this Order: New WAC 284-180-325, 284-180-405, 284-180-411, 284-180-415, 284-180-421, 284-180-425, 284-180-431, 284-180-435, 284-180-441, 284-180-445, 284-180-450, 284-180-455, 284-180-460 and 284-180-500; repealing WAC 284-180-330 and 284-180-340; and amending WAC 284-180-110, 284-180-120, 284-180-130, 284-180-210, 284-180-220, 284-180-230, 284-180-240, 284-180-310, 284-180-320, 284-180-400, 284-180-410, 284-180-420, and 284-180-430.

Statutory Authority for Adoption: RCW 48.02.060 and 48.200.900.

Adopted under notice filed as WSR 20-22-081 on November 3, 2020.

Changes Other than Editing from Proposed to Adopted Version: A technical change was made in WAC 284-180-230 to add "(c)" to correct a sentence that did not have a subsection identifier with it. Another technical change was made to

WAC 284-180-120 to align with existing law, which identifies that this chapter does not apply to the actions of health care benefit managers providing services to or on behalf of medicaid.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, email TabbaA@oic.wa.gov, website www.insurance.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 14, Amended 13, Repealed 2.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 14, Amended 13, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 29, 2020.

Mike Kreidler
Insurance Commissioner

Chapter 284-180 WAC

~~((PHARMACY))~~ HEALTH CARE BENEFIT MANAGERS

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-110 Purpose. ~~((These regulations implement chapter 19.340 RCW))~~ (1) The purpose of this chapter is to establish uniform regulatory standards for health care benefit managers including, but not limited to, the processes and procedures for registration ((and regulation of pharmacy)) of health care benefit managers by the office of the insurance commissioner (commissioner).

(2) This chapter applies to all health care benefit managers except as otherwise expressly provided in this chapter. Health care benefit managers are responsible for compliance with the provisions of this chapter and are responsible for the compliance of any person or organization acting on behalf of or at the direction of the health care benefit manager, or acting pursuant to health care benefit manager standards or requirements. Carriers remain responsible for activities of health care benefit managers conducted on their behalf. A carrier may not offer as a defense to a violation of any provision of this chapter that the violation arose from the act or omission of a health care benefit manager or other person acting on behalf of or at the direction of a health care benefit manager.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-120 Applicability and scope. (1) This chapter applies to ((pharmacy)) health care benefit managers as defined in RCW ((19.340.010)) 48.200.020.

~~((1) Specifically, this chapter applies to the actions of pharmacy benefit managers regarding contracts with pharmacies on behalf of an insurer, a third party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 in regard to:~~

~~(a) Fully insured health plans; and~~

~~(b) Medicaid plans. However, the appeal requirements of RCW 19.340.100 do not apply to medicaid plans.))~~

(2) This chapter does not apply to the actions of ((pharmacy)) health care benefit managers providing services to, or acting ((as third party administrators regarding contracts with pharmacies on behalf of an insurer, a third party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 in regard to)) on behalf of:

(a) Self-insured health plans; ((and))

(b) Medicare plans;

(c) Medicaid; and

(d) Union plans.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-130 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions apply throughout this chapter:

(1) "Affiliate" or "affiliated employer" has the same meaning as the definition of affiliate or affiliated employer in RCW 48.200.020.

(2) "Certification" has the same meaning as the definition of certification in RCW 48.43.005.

(3) "Corporate umbrella" means an arrangement consisting of, but not limited to, subsidiaries and affiliates operating under common ownership or control.

~~((2))~~ (4) "Employee benefits programs" has the same meaning as the definition of employee benefits program in RCW 48.200.020.

(5) "Generally available for purchase" means available for purchase by multiple pharmacies within the state of Washington from national or regional wholesalers.

~~((3))~~ (6) "Health care benefit manager" has the same meaning as the definition of health care benefit manager in RCW 48.200.020.

(7) "Health care provider" or "provider" has the same meaning as the definition of health care provider in RCW 48.43.005.

(8) "Health care services" has the same meaning as the definition of health care services in RCW 48.43.005.

(9) "Health carrier" has the same meaning as the definition of health carrier in RCW 48.43.005.

(10) "Laboratory benefit manager" has the same meaning as the definition of laboratory benefit manager in RCW 48.43.020.

(11) "Mental health benefit manager" has the same meaning as the definition of mental health benefit manager in RCW 48.200.020.

(12) "Net amount" means the invoice price that the pharmacy paid to the supplier for a prescription drug that it dispensed, plus any taxes, fees or other costs, minus the amount of all discounts and other cost reductions attributable to the drug.

~~((4))~~ (13) "Network" has the same meaning as the definition of network in RCW 48.200.020.

(14) "Oversight activities" includes all work done by the commissioner to ensure that the requirements of chapter ~~((49.340))~~ 48.200 RCW are properly followed and in fulfilling its duties as required under chapter ~~((49.340))~~ 48.200 RCW.

~~((5))~~ (15) "Person" has the same meaning as the definition of person in RCW 48.200.020.

(16) "Pharmacy benefit manager" has the same meaning as the definition of pharmacy benefit manager in RCW 48.200.020.

(17) "Predetermined reimbursement cost" means maximum allowable cost, maximum allowable cost list, or any other benchmark price utilized by the pharmacy benefit manager, including the basis of the methodology and sources utilized to determine multisource generic drug reimbursement amounts. However, dispensing fees are not included in the calculation of predetermined reimbursement costs for multisource generic drugs.

~~((6))~~ (18) "Radiology benefit manager" has the same meaning as the definition of radiology benefit manager in RCW 48.200.020.

(19) "Readily available for purchase" means manufactured supply is held in stock and available for order by more than one pharmacy in Washington state when such pharmacies are not under the same corporate umbrella.

~~((7))~~ (20) "Retaliate" means action, or the implied or stated threat of action, to decrease reimbursement or to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefit manager's provider network solely or in part because the pharmacy has filed or intends to file an appeal under RCW ~~((49.340.100))~~ 48.200.280.

~~((8))~~ (21) "Unsatisfied" means that the network pharmacy did not receive the reimbursement that it requested at the first tier appeal.

(22) "Utilization review" has the same meaning as the definition of utilization review in RCW 48.43.005.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-210 Registration and renewal fees. (1)

The registration, renewal and oversight activities for ~~((pharmacy))~~ health care benefit managers must be self-supporting. Each ~~((pharmacy))~~ health care benefit manager must contribute a sufficient amount to the commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating ~~((pharmacy))~~ health care benefit managers.

(2) The registration fee is two hundred dollars.

(3) For the renewal fee, the commissioner will charge a proportional share of the annual cost of renewal and oversight activities to all ~~((pharmacy))~~ health care benefit managers. The ~~((pharmacy))~~ health care benefit managers' proportional share shall be based on their Washington state annual

gross ~~((pharmacy))~~ health care benefit manager business income for the previous calendar year. The minimum renewal fee is five hundred dollars.

~~((4))~~ ~~((No later than March 1st of each year, pharmacy benefit managers must report their Washington state annual gross pharmacy benefit manager business income for the previous calendar year on a form prescribed by the commissioner.~~

~~((5))~~ ~~On or before June 1st of each year, the commissioner will calculate and set the renewal fees for the ensuing fiscal year of July 1st through June 30th.~~

~~((6))~~ If an unexpended balance of ~~((pharmacy))~~ health care benefit manager registration and renewal funds remain in the insurance commissioner's regulatory account at the close of a fiscal year, the commissioner will carry the unexpended funds forward and use them to reduce future renewal fees.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-220 ((Pharmacy)) Health care benefit manager registration. (1) Beginning January 1, 2017, ~~((and thereafter))~~ through December 31, 2021, to conduct business in this state, pharmacy benefit managers must register with the commissioner and must annually renew the registration.

(2) ~~((Pharmacy))~~ Beginning January 1, 2022, and thereafter, to conduct business in this state, health care benefit managers must register and have an approved registration with the commissioner. To continue conducting business in this state, previously registered pharmacy benefit managers must submit an application and registration fee to register as a health care benefit manager. Health care benefit managers must annually renew their registration.

(3) Health care benefit managers must ~~((register))~~ apply for registration using the commissioner's electronic system, which is available at www.insurance.wa.gov.

~~((3))~~ (4) The registration period is valid from the date of approval of registration through June 30th of the same fiscal year.

~~((4))~~ (5) The registration application is not complete until the commissioner receives ~~((both))~~ the complete registration form, any supporting documentation if required by the commissioner, and the correct registration fee.

(6) A health care benefit manager may conduct business in this state, after the health care benefit manager receives notice of approval of the registration application from the commissioner.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-230 ((Pharmacy)) Health care benefit manager renewal. (1) ~~((Pharmacy))~~ Health care benefit managers must annually renew their registrations ~~((by paying))~~ and pay the health care benefit manager's renewal fee ~~((Pharmacy benefit managers must access invoices through))~~ using the commissioner's electronic system, which is available at www.insurance.wa.gov.

~~((The renewal is valid for one fiscal year, from July 1st through June 30th.~~

(3) The renewal fee is due and payable no later than July 15th of each year. Failure to timely pay the renewal fee may subject a pharmacy benefit manager to a civil penalty under RCW 19.340.110(2).

(4)) Health care benefit managers must renew their registrations by:

(a) No later than March 1st of each year, submitting a complete renewal form and supporting documents for approval to include:

(i) The health care benefit manager's Washington state annual gross health care benefit manager business income for the previous calendar year; and

(ii) Any additional information as required by the commissioner.

(b) No later than July 15th of each year, pay the renewal fee as invoiced by the commissioner.

(c) On or before June 1st of each year, the commissioner will calculate and set the renewal fees for the upcoming fiscal year for July 1st through June 30th.

(3) The renewal application is not complete until the commissioner receives the complete renewal form, supporting documentation if required by the commissioner, and the correct renewal fee.

(4) Failure to timely submit a completed renewal form and fees may result in delayed renewal or nonrenewal in addition to potential violations if a health care benefit manager provides services without being registered.

(5) The health care benefit manager will receive notice of approval of the renewal application from the commissioner.

(6) The renewal is valid for one fiscal year from July 1st through June 30th.

AMENDATORY SECTION (Amending WSR 18-13-023, filed 6/8/18, effective 7/9/18)

WAC 284-180-240 Providing and updating registration information. (1) At the time of registration, a ~~((pharmacy))~~ health care benefit manager must submit an application with an affidavit affirming its accuracy. In the application, a health care benefit manager must provide ((its)):

(a) The legal name as well as any and all additional names that it uses to conduct business((-

(2) Registered pharmacy benefit managers must provide the commissioner with a valid email address, which the commissioner will use as the official contact address for communications regarding registrations, renewals and oversight activities.

(3) In addition to providing a valid email address, registered pharmacy benefit managers must identify a pharmacy benefit manager employee who is the single point of contact for appeals under WAC 284-180-420 and 284-180-430, and must fill out the form that the commissioner makes available for this purpose at www.insurance.wa.gov.

(4)):

(b) The names of all persons and entities with any ownership or controlling interest, including officers and directors in the health care benefit manager, along with completed NAIC Form 11 biographical affidavits and, if requested, an NAIC Approved Third-Party Vendor Background Report;

(c) Tax identification numbers;

(d) Other business licenses and registrations that the health care benefit manager has held and those that are active;

(e) Identifying any areas of specialty, such as a pharmacy benefit management, radiology benefit management, laboratory benefit management, mental health care benefit management, or any other areas of specialty identified in the application;

(f) Contact information for communications regarding registration, renewal and oversight activities, including address, phone number, name of the contact person for the health care benefit manager, and valid email address;

(g) Name and contact information for the person the health care benefit manager has designated as responsible for compliance with state and federal laws;

(h) Identify if the health care benefit manager has committed any violations in this or any state or been the subject of an order from a department of insurance or other state agency; and

(i) Any additional information requested by the commissioner.

(2) Registered ~~((pharmacy))~~ health care benefit managers must ensure that the information that they disclosed when they registered with the commissioner remains current by notifying the commissioner of any changes or additions.

(a) This information includes, but is not limited to:

(i) Any and all additional names that ~~((pharmacy))~~ the health care benefit manager~~((s-use))~~ uses to conduct business; and

(ii) The email address for official communications between the commissioner and the ~~((pharmacy))~~ health care benefit manager~~((s-and~~

(iii) The name, contact information, and any other information that the pharmacy benefit manager submitted on the commissioner's form under subsection (3) of this section regarding the pharmacy benefit manager employee who is the pharmacy benefit manager's single point of contact for appeals under WAC 284-180-420 and 284-180-430)).

(b) Any change in the information provided to obtain or renew a registration is a material change and must be reported within thirty days of any change, ~~((pharmacy))~~ by the health care benefit manager~~((s-must report changes to the commissioner))~~ using the commissioner's electronic system.

SUBCHAPTER C

((ENFORCEMENT)) RECORDS AND NOTICES

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-310 ((Pharmacy)) Health care benefit manager records. (1) ~~((Pharmacy))~~ Health care benefit managers must maintain all records for a period of seven years from the date of creation and make them available to the commissioner upon request. Records include, but are not limited to:

(a) Registration and renewal materials that ~~((pharmacy))~~ health care benefit managers submit to the commissioner to request registration and renewal; and

(b) Health care benefit managers that engage in pharmacy benefit management must also maintain information about appeals under chapter ((19.340)) 48.200 RCW.

(2) These materials are subject to review by the commissioner's representatives.

(3) The commissioner may require ((pharmacy)) health care benefit managers to provide copies of records.

(4) When the commissioner requests copies of records for inspection, ((pharmacy)) health care benefit managers must transmit these documents ((to)) as directed by the commissioner ((electronically)).

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-320 Deadline to provide copies of records. (1) If the commissioner requests records for inspection for a purpose other than to resolve an appeal under RCW ((19.340.100(6), a pharmacy)) 48.200.280, a health care benefit manager must make the records available to the commissioner within fifteen business days from the date on the written request. If the commissioner grants a written extension, then the records are due by the date indicated on the extension.

(2) Upon receipt of any inquiry from the commissioner concerning a complaint, every health care benefit manager must furnish the commissioner with an adequate response to the inquiry within fifteen business days after receipt of the commissioner's inquiry using the commissioner's electronic company complaint system.

NEW SECTION

WAC 284-180-325 Required notices. (1) Carriers must post on their website information that identifies each health care benefit manager contracted with the carrier and identify the services provided by the health care benefit manager. The information must be easy to find on the carriers' website with a link from the web page utilized for enrollees. The carrier is required to update the information on their website within thirty business days of any change, such as addition or removal of a health care benefit manager or a change in the services provided by a health care benefit manager.

(2) Carriers must notify enrollees in writing and at least annually, including at plan enrollment and renewal, of each health care benefit manager contracted with the carrier to provide any health care benefit management services. For example, written notices include disclosure in the policy or member handbook. This notice must identify the website address where enrollees can view an updated listing of all health care benefit managers utilized by the carrier.

SUBCHAPTER D

((APPEALS)) CONTRACT FILINGS

AMENDATORY SECTION (Amending WSR 18-13-023, filed 6/8/18, effective 7/9/18)

WAC 284-180-400 Appeals by network pharmacies to ((pharmacy)) health care benefit managers who pro-

vide pharmacy benefit management services. A network pharmacy may appeal a reimbursement to a health care benefit manager providing pharmacy benefit ((manager)) management services (first tier appeal) if the reimbursement for the drug is less than the net amount the network pharmacy paid to the supplier of the drug. "Network pharmacy" has the meaning set forth in RCW 19.340.100 (1)(d). "Pharmacy benefit manager" is a health care benefit manager that offers pharmacy benefit management services and has the meaning set forth in RCW ((19.340.010 (6)(a)) 48.200.020. A pharmacy benefit manager must process the network pharmacy's appeal as follows:

(1) A pharmacy benefit manager must include language in the pharmacy provider contract and on the pharmacy benefit manager's website fully describing the right to appeal under RCW ((19.340.100)) 48.200.280. If the health care benefit manager provides other health care benefit management services in addition to pharmacy benefit management services, then this information must be under an easily located page that is specific to pharmacy services. The description must include, but is not limited to:

(a) Contact information, including:

(i) A telephone number by which the pharmacy may contact the pharmacy benefit manager during normal business hours and speak with an individual responsible for processing appeals;

(ii) A summary of the specific times when the pharmacy benefit manager will answer calls from network pharmacies at that telephone number;

(iii) A fax number that a network pharmacy can use to submit information regarding an appeal; and

(iv) An email address that a network pharmacy can use to submit information regarding an appeal.

(b) A detailed description of the actions that a network pharmacy must take to file an appeal; and

(c) A detailed summary of each step in the pharmacy benefit manager's appeals process.

(2) The pharmacy benefit manager must reconsider the reimbursement. A pharmacy benefit manager's review process must provide the network pharmacy or its representatives with the opportunity to submit information to the pharmacy benefit manager including, but not limited to, documents or written comments. The pharmacy benefit manager must review and investigate the reimbursement and consider all information submitted by the network pharmacy or its representatives prior to issuing a decision.

(3) The pharmacy benefit manager must complete the appeal within thirty calendar days from the time the network pharmacy submits the appeal. If the network pharmacy does not receive the pharmacy benefit manager's decision within that time frame, then the appeal is deemed denied.

(4) The pharmacy benefit manager must uphold the appeal of a network pharmacy with fewer than fifteen retail outlets within the state of Washington, under its corporate umbrella, if the pharmacy demonstrates that they are unable to purchase therapeutically equivalent interchangeable product from a supplier doing business in the state of Washington at the pharmacy benefit manager's list price. "Therapeutically equivalent" is defined in RCW 69.41.110(7).

(5) If the pharmacy benefit manager denies the network pharmacy's appeal, the pharmacy benefit manager must provide the network pharmacy with a reason for the denial and the national drug code of a drug that has been purchased by other network pharmacies located in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug. "Multisource generic drug" is defined in RCW 19.340.100 (1)(c).

(6) If the pharmacy benefit manager upholds the network pharmacy's appeal, the pharmacy benefit manager must make a reasonable adjustment no later than one day after the date of the determination. If the request for an adjustment is from a critical access pharmacy, as defined by the state health care authority by rule for purpose related to the prescription drug purchasing consortium established under RCW 70.14.060, any such adjustment shall apply only to such pharmacies.

(7) If otherwise qualified, the following may file an appeal with a pharmacy benefit manager:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply.

(8) A pharmacy benefit manager's response to an appeal submitted by a Washington small pharmacy that is denied, partially reimbursed, or untimely must include written documentation or notice to identify the exact corporate entity that received and processed the appeal. Such information must include, but is not limited to, the corporate entity's full and complete name, taxpayer identification number, and number assigned by the office of the insurance commissioner.

(9) Health care benefit managers providing pharmacy benefit management services benefit managers must identify a pharmacy benefit manager employee who is the single point of contact for appeals, and must include the address, phone number, name of the contact person, and valid email address. This includes completing and submitting the form that the commissioner makes available for this purpose at www.insurance.wa.gov.

NEW SECTION

WAC 284-180-405 Definitions in this subchapter.

The definitions in this section apply throughout this subchapter.

(1) "Complete filing" means a package of information containing forms, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

(2) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(3) "Filer" means:

(a) A person, organization or other entity that files forms or rates with the commissioner for a carrier or health care benefit manager; or

(b) A person employed by a carrier or health care benefit manager to file under this chapter.

(4) "Form" means a "health care benefit management contract" or "contract" and means any written agreement describing the rights and responsibilities of the parties, such as carriers, health care benefit managers, providers, pharmacy, pharmacy services administration organization, and employee benefit program conforming to chapter 48.200 RCW and this chapter including:

(a) All forms that are part of the contract; and

(b) All amendments to the contract.

(5) "NAIC" means the National Association of Insurance Commissioners.

(6) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation, or other information; or

(b) Explains errors or omissions in the filing.

(7) "SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule, and form filings electronically to the commissioner.

(8) "Type of insurance" or "TOI" means a specific type of health care coverage listed in the *Uniform Life, Accident and Health, Annuity and Credit Coding Matrix* published by the NAIC and available at www.naic.org.

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-410 Use of brief adjudicative proceedings for appeals by network pharmacies to the commissioner. The commissioner has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494 for actions involving a network pharmacy's appeal of a pharmacy benefit manager's reimbursement costs for multisource generic drugs (reimbursement). WAC ((284-180-410)) 284-180-500 through ((284-180-440)) 284-180-540 describe the procedures for how the commissioner processes a network pharmacy's appeal of the pharmacy benefit manager's decision in the first tier appeal (second tier appeal) through a brief adjudicative proceeding.

This rule does not apply to adjudicative proceedings under WAC 284-02-070, including converted brief adjudicative proceedings.

NEW SECTION

WAC 284-180-411 Purpose of this subchapter. The purpose of this subchapter is to:

(1) Adopt processes and procedures for filers to use when submitting electronic forms and rates to the commissioner by way of SERFF.

(2) Designate SERFF as the method by which filers, including health care service contractors, health maintenance organizations, insurers as defined in RCW 48.01.050, and health care benefit managers must submit all health care benefit management contract forms to the commissioner.

NEW SECTION

WAC 284-180-415 Scope of this subchapter. This subchapter applies to all carriers and health care benefit managers that must file forms under chapter 48.200 RCW.

AMENDATORY SECTION (Amending WSR 18-13-023, filed 6/8/18, effective 7/9/18)

WAC 284-180-420 Appeals by network pharmacies to the commissioner. The following procedure applies to brief adjudicative proceedings before the commissioner for actions involving a network pharmacy's appeal of a pharmacy benefit manager's decision in a first tier appeal regarding reimbursement for a drug subject to predetermined reimbursement costs for multisource generic drugs, unless the matter is converted to a formal proceeding as provided in WAC ((284-180-440)) 284-180-540(3).

(1) **Grounds for appeal.** A network pharmacy or its representative may appeal a pharmacy benefit manager's decision to the commissioner if it meets all the following requirements:

(a) The pharmacy benefit manager's decision must have denied the network pharmacy's appeal, or the network pharmacy must be unsatisfied with the outcome of its appeal to the pharmacy benefit manager;

(b) The network pharmacy must request review of the pharmacy benefit manager's decision by filing a written petition for review form. A form for this purpose is available at www.insurance.wa.gov.

The petition for review must include:

(i) The network pharmacy's basis for appealing the pharmacy benefit manager's decision in the first tier appeal;

(ii) The network pharmacy's federal identification number, unified business identifier number, business address, and mailing address;

(iii) The documents from the first tier review, including the documents that the pharmacy submitted to the pharmacy benefit manager as well as the documents that the pharmacy benefit manager provided to the pharmacy in response to the first tier review; (~~and~~)

(iv) Documentation evidencing the net amount paid for the drug by the small pharmacy;

(v) If the first-tier appeal was denied by the pharmacy benefit manager because a therapeutically equivalent drug was available in the state of Washington at a price less than or equal to the predetermined reimbursement cost for the multisource generic drug and documentation provided by the phar-

macy benefit manager evidencing the national drug code of the therapeutically equivalent drug; and

(vi) Any additional information that the commissioner may require.

(c) The network pharmacy must deliver the petition for review to the commissioner's Tumwater office by mail, hand delivery, or by other methods that the commissioner may make available;

(d) The network pharmacy must file the petition for review with the commissioner within thirty days of receipt of the pharmacy benefit manager's decision; and

(e) The network pharmacy making the appeal must have less than fifteen retail outlets within the state of Washington under its corporate umbrella. The petition for review that the network pharmacy submits to the commissioner must state that this requirement is satisfied, and must be signed and verified by an officer or authorized representative of the network pharmacy.

(2) **Time frames governing appeals to the commissioner.** The commissioner must complete the appeal within thirty calendar days of the receipt of the network pharmacy's ~~((appeal))~~ complete petition for review. A complete petition for review means that all requirements under (1) of this subsection have been satisfied, including the submission of all required documents and documentation. An appeal before the commissioner is deemed complete when a presiding officer issues an initial order on behalf of the commissioner to both the network pharmacy and pharmacy benefit manager under subsection (8) of this section. Within seven calendar days of the resolution of a dispute, the presiding officer shall provide a copy of the initial order to both the network pharmacy and pharmacy benefit manager.

(3) **Relief the commissioner may provide.** The commissioner, by and through a presiding officer or reviewing officer, may enter an order directing the pharmacy benefit manager to make an adjustment to the disputed claim, denying the network pharmacy's appeal, or may take other actions deemed fair and equitable.

(4) **Notice.** If the presiding officer under the use of discretion chooses to conduct an oral hearing, the presiding officer will set the time and place of the hearing. Written notice shall be served upon both the network pharmacy and pharmacy benefit manager at least seven days before the date of the hearing. Service is to be made pursuant to WAC 284-180-440(2). The notice must include:

(a) The names and addresses of each party to whom the proceedings apply and, if known, the names and addresses of any representatives of such parties;

(b) The official file or other reference number and name of the proceeding, if applicable;

(c) The name, official title, mailing address and telephone number of the presiding officer, if known;

(d) A statement of the time, place and nature of the proceeding;

(e) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(f) A reference to the particular sections of the statutes or rules involved;

(g) A short and plain statement of the matters asserted by the network pharmacy against the pharmacy benefit manager and the potential action to be taken; and

(h) A statement that if either party fails to attend or participate in a hearing, the hearing can proceed and the presiding or reviewing officer may take adverse action against that party.

(5) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the commissioner in a brief adjudicative proceeding is limited to:

(a) Persons who are natural persons representing themselves;

(b) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(c) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(d) Public officials in their official capacity;

(e) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(f) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(g) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(6) **Method of response.** Upon receipt of any inquiry from the commissioner concerning a network pharmacy's appeal of a pharmacy benefit manager's decision in the first tier appeal regarding reimbursement for a drug subject to pre-determined reimbursement costs for multisource generic drugs, pharmacy benefit managers must respond to the commissioner using the commissioner's electronic pharmacy appeals system.

(7) **Hearings by telephone.** If the presiding officer chooses to conduct a hearing, then the presiding officer may choose to conduct the hearing telephonically. The conversation will be recorded and will be part of the record of the hearing.

(8) **Presiding officer.**

(a) Per RCW 34.05.485, the presiding officer may be the commissioner, one or more other persons designated by the commissioner per RCW 48.02.100, or one or more other administrative law judges employed by the office of administrative hearings. The commissioner's choice of presiding officer is entirely discretionary and subject to change at any time. However, it must not violate RCW 34.05.425 or 34.05.458.

(b) The presiding officer shall conduct the proceeding in a just and fair manner. Before taking action, the presiding officer shall provide both parties the opportunity to be informed of the presiding officer's position on the pending matter and to explain their views of the matter. During the course of the proceedings before the presiding officer, the parties may present all relevant information.

(c) The presiding officer may request additional evidence from either party at any time during review of the initial order. After the presiding officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the presiding officer, unless the presiding officer, under the use of discretion, allows additional time to submit the evidence.

(d) The presiding officer has all authority granted under chapter 34.05 RCW.

(9) **Entry of orders.**

(a) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within ten days of issuing the decision, the presiding officer shall serve upon the parties the initial order, as well as information regarding any administrative review that may be available before the commissioner. The presiding officer's issuance of a decision within the ten day time frame satisfies the seven day requirement in subsection (2) of this section.

(b) The initial order consists of the decision and the brief written statement of the basis and legal authority. The initial order will become a final order if neither party requests a review as provided in WAC ((284-180-430)) 284-180-530(1).

(10) **Filing instructions.** When a small pharmacy or a pharmacy benefit manager provides information to the commissioner regarding appeals under WAC ((284-180-420)) 284-180-520, the small pharmacy or pharmacy benefit manager must follow the commissioner's filing instructions, which are available at www.insurance.wa.gov.

NEW SECTION

WAC 284-180-421 Filing instructions that are incorporated into this subchapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF website into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* available within the SERFF application; and

(2) The *Washington State SERFF Health Care Benefit Management General Filing Instructions* posted on the commissioner's website (www.insurance.wa.gov).

NEW SECTION

WAC 284-180-425 General health care benefit management form filing rules. (1) Each health care benefit management contract form and contract amendment form filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must:

(i) Be attached to the form schedule; and

(ii) Have a unique identifying number and a way to distinguish it from other versions of the same form.

(b) Filers must send all written correspondence related to a form filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a nonpublic record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* available within the SERFF application and the *Washington State SERFF Health Care Benefit Management General Filing Instructions*, as revised from time to time and posted on the commissioner's website (www.insurance.wa.gov).

AMENDATORY SECTION (Amending WSR 17-01-139, filed 12/20/16, effective 1/1/17)

WAC 284-180-430 Review of initial orders from brief adjudicative proceedings. The following procedure applies to the commissioner's review of a brief adjudicative proceeding conducted pursuant to WAC ((~~284-180-420~~) 284-180-520), unless the matter is converted to a formal proceeding as provided in WAC ((~~284-180-440~~) 284-180-540) (4).

(1) **Request for review of initial order.** A party to a brief adjudicative proceeding under WAC ((~~284-180-420~~) 284-180-520) may request review of the initial order by filing a written petition for review with the commissioner within twenty-one days after service of the initial order is received or deemed to be received by the party. A form for this purpose is available at www.insurance.wa.gov. The request for review must be in writing and delivered to the commissioner's Tumwater office by mail, hand delivery, or by other methods that the commissioner may make available.

(a) When making a petition for review of the initial order, the petitioner must submit to the reviewing officer any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider.

(b) The commissioner may, on its own motion, conduct an administrative review of the initial order as provided for in RCW 34.05.491.

(2) **Reviewing officer.** The commissioner shall appoint a reviewing officer who satisfies the requirements of RCW 34.05.491(2). The reviewing officer shall:

(a) Make such determination as may appear to be just and lawful;

(b) Provide both the network pharmacy and the pharmacy benefit manager an opportunity to explain their positions on the matter; and

(c) Make any inquiries necessary to determine whether the proceeding should be converted to a formal adjudicative proceeding. The review is governed by the brief adjudicative procedures of chapter 34.05 RCW and this rule, or WAC 284-02-070 in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding. The reviewing officer shall have the authority of a presiding officer as provided in WAC ((~~284-180-420~~) 284-180-520).

(3) **Record review.**

(a) Review of an initial order is limited to:

- (i) The evidence that the presiding officer considered;
- (ii) The initial order;
- (iii) The recording of the initial proceeding; and

(iv) Any records and written evidence that the parties submitted to the reviewing officer.

(b) However, the record that the presiding officer made does not need to constitute the exclusive basis for the reviewing officer's decision.

(c) The reviewing officer may request additional evidence from either party at any time during review of the initial order. After the reviewing officer requests evidence from a party, the party has seven days after service of the request to supply the evidence to the reviewing officer, unless the reviewing officer, under the use of discretion, allows additional time to submit the evidence.

(d) If the reviewing officer determines that oral testimony is needed, the officer may schedule a time for both parties to present oral testimony. Oral statements before the reviewing officer shall be by telephone, unless specifically scheduled by the reviewing officer to be in person.

(e) Each party will have an opportunity to respond to the other party's request for review and may also submit any other relevant evidence and written material to the reviewing officer.

(i) The other party must:

(A) Submit material within seven days of service of the material submitted by the party requesting review of the initial order; and

(B) Serve a copy of all evidence and written material provided to the reviewing officer to the party requesting review according to WAC ((~~284-180-440~~) 284-180-540)(2).

(ii) Proof of service is required under WAC ((~~284-180-440~~) 284-180-540) (2)(g) when a party submits material to the other party under this subsection.

(4) **Failure to participate.** If a party requesting review of an initial order under subsection (1) of this section fails to participate in the proceeding or fails to provide documentation to the reviewing officer upon request, the reviewing officer may uphold the initial order based upon the record.

(5) **Final orders.**

(a) The reviewing officer's final order must include the decision of the reviewing officer and a brief statement of the basis and legal authority for the decision.

(b) Unless there are continuances, the reviewing officer will issue the final order within twenty days of the petition for review.

(6) **Reconsideration.** Unless otherwise provided in the reviewing officer's order, the reviewing officer's order represents the final position of the commissioner. A petitioner may only seek a reconsideration of the reviewing officer's order if the final order contains a right to a reconsideration.

(7) **Judicial review.** Judicial review of the final order of the commissioner is available under Part V, chapter 34.05 RCW. However, as required by RCW 34.05.534, judicial review may be available only if the petitioner has requested a review of the initial order under this subsection and has exhausted all other administrative remedies.

NEW SECTION

WAC 284-180-431 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with this subchapter. If the commis-

sioner rejects a filing, the filer has not filed forms with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-180-435 Filing authorization rules. A carrier or health care benefit manager may authorize a third-party filer to file forms or rates on its behalf. For the purposes of this section, a "third-party filer" means a person or entity in the business of providing regulatory compliance services.

(1) If a carrier or health care benefit manager delegates filing authority to a third-party filer, each filing must include a letter as supporting documentation signed by an officer of the carrier or health care benefit manager authorizing the third-party filer to make filings on behalf of the carrier or health care benefit manager.

(2) The carrier or health care benefit manager may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the carrier or health care benefit manager.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority.

NEW SECTION

WAC 284-180-441 Rules for responding to an objection letter. An objection letter may ask the filer to revise a noncompliant form or provide clarification or additional information. The objection letter will state the reason(s) for the objection, including relevant case law, statutes, and rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response must include a separate response to each objection, and if appropriate:

(a) A description of changes proposed to noncompliant forms, and a replacement form attached to the form schedule; or

(b) Revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner designated by the commissioner in the objection letter.

(3) Failure to timely respond to an objection is a violation.

NEW SECTION

WAC 284-180-445 Rules for revised or replaced forms. If a carrier or health care benefit manager files a revised or replaced form, the filer must provide the supporting documentation described below:

(1) If a form is revised due to an objection(s) from the commissioner, the filer must provide a detailed explanation of all material changes to the replaced form.

(2) If a form is replaced with a new version, the filer must submit an exhibit that marks and identifies each change or revision to the replaced form using one of these methods:

(a) A draft form that strikes through deletions and underlines additions or changes in the form;

(b) A draft form that includes comments in the margins explaining the changes in the form; or

(c) A side-by-side comparison of current and proposed language.

NEW SECTION

WAC 284-180-450 Effective date rules. (1) Filers must include a common implementation date for all forms submitted in a filing.

(2) Filers may submit a request to change the implementation date of a filing as a note to reviewer.

NEW SECTION

WAC 284-180-455 Carrier filings related to health care benefit managers. (1) A carrier must file all contracts and contract amendments with a health care benefit manager within thirty days following the effective date of the contract or contract amendment. If a carrier negotiates, amends, or modifies a contract or a compensation agreement that deviates from a previously filed contract, then the carrier must file that negotiated, amended, or modified contract or agreement with the commissioner within thirty days following the effective date. The commissioner must receive the filings electronically in accordance with this subchapter.

(2) Carriers must maintain health care benefit manager contracts at its principal place of business in the state, or the carrier must have access to all contracts and provide copies to facilitate regulatory review upon twenty days prior written notice from the commissioner.

(3) Nothing in this section relieves the carrier of the responsibility detailed in WAC 284-170-280 (3)(b) to ensure that all contracts are current and signed if the carrier utilizes a health care benefit manager's providers and those providers are listed in the network filed for approval with the commissioner.

(4) If a carrier enters into a reimbursement agreement that is tied to health outcomes, utilization of specific services, patient volume within a specific period of time, or other performance standards, the carrier must file the reimbursement agreement with the commissioner within thirty days following the effective date of the reimbursement agreement, and identify the number of enrollees in the service area in which the reimbursement agreement applies. Such reimbursement agreements must not cause or be determined by the commissioner to result in discrimination against or rationing of medically necessary services for enrollees with a specific covered condition or disease. If the commissioner fails to notify the carrier that the agreement is disapproved within thirty days of receipt, the agreement is deemed approved. The commissioner may subsequently withdraw such approval for cause.

(5) Health care benefit manager contracts and compensation agreements must clearly set forth the carrier provider networks and applicable compensation agreements associated with those networks so that the provider or facility can understand their participation as an in-network provider and the reimbursement to be paid. The format of such contracts and agreements may include a list or other format acceptable

to the commissioner so that a reasonable person will understand and be able to identify their participation and the reimbursement to be paid as a contracted provider in each provider network.

NEW SECTION

WAC 284-180-460 Health care benefit manager filings. (1) A health care benefit manager must file all contracts and contract amendments between a provider, pharmacy, pharmacy services administration organization, or other health care benefit manager entered into directly or indirectly in support of a contract with a carrier or employee benefits program within thirty days following the effective date of the contract or contract amendment. If a health care benefit manager negotiates, amends, or modifies a contract or a compensation agreement that deviates from a filed agreement, then the health care benefit manager must file that negotiated, amended, or modified contract or agreement with the commissioner within thirty days following the effective date. The commissioner must receive the filings electronically in accordance with this chapter.

(2) Health care benefit managers must maintain health care benefit management contracts at its principal place of business in the state, or the health care benefit manager must have access to all contracts and provide copies to facilitate regulatory review upon twenty days prior written notice from the commissioner.

(3) Health care benefit manager contracts and compensation agreements must clearly set forth provider network names and applicable compensation agreements associated with those networks so that the provider or facility can understand their participation as an in-network provider and the reimbursement to be paid. The format of such contracts and agreements may include a list or other format acceptable to the commissioner so that a reasonable person will understand and be able to identify their participation and the reimbursement to be paid as a contracted provider in each provider network.

SUBCHAPTER E

APPEALS

NEW SECTION

WAC 284-180-500 Applicability and scope. This subchapter applies to health care benefit managers providing pharmacy benefit management services, referred to as pharmacy benefit managers in this subchapter.

(1) Specifically, this subchapter applies to the actions of pharmacy benefit managers regarding contracts with pharmacies on behalf of an insurer, a third-party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 in regard to:

- (a) Fully insured health plans; and
- (b) Medicaid plans. However, the appeal requirements of RCW 19.340.100 do not apply to Medicaid plans.

(2) This subchapter does not apply to the actions of pharmacy benefit managers acting as third-party administrators regarding contracts with pharmacies on behalf of an insurer,

a third-party payor, or the prescription drug purchasing consortium established under RCW 70.14.060 in regard to:

- (a) Self-insured health plans; and
- (b) Medicare plans.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

| Old WAC Number | New WAC Number |
|----------------|----------------|
| 284-180-140 | 284-180-510 |
| 284-180-400 | 284-180-505 |
| 284-180-410 | 284-180-515 |
| 284-180-420 | 284-180-520 |
| 284-180-430 | 284-180-530 |
| 284-180-440 | 284-180-540 |

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-180-330 Actions that may result in a fine.

WAC 284-180-340 When a violation is knowing and willful.

WSR 21-02-037

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed December 29, 2020, 2:47 p.m., effective January 29, 2021]

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

Purpose: Grievance requirements for long-term care ombudsman program (LTCOP).

Citation of Rules Affected by this Order: Amending WAC 365-18-060.

Statutory Authority for Adoption: Chapter 43.190 RCW.

Adopted under notice filed as WSR 20-17-121 on August 18, 2020.

Changes Other than Editing from Proposed to Adopted Version: Based on stakeholder comments, the department updated the language to ensure it mirrors the federal language for grievance requirements. The updated language will comply with the federal requirement that state ombuds have the sole authority over certification and decertification by removing the language "highest level of appeal shall be the contractor and the contractor's governing board."

The department also removed the word "appeal" from the two places it appears in the WAC. The term "appeal" suggests a multileveled review process. A multilevel appeal is not required by the federal law on grievances and is difficult to implement without violating other LTCOP laws.

The department also clarified that the grievance process must include notification to the long-term ombudsman with a copy delivered to the contractor's governing board.

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

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

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

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

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

Date Adopted: December 29, 2020.

Dave Pringle
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-09-060, filed 4/17/00, effective 5/18/00)

WAC 365-18-060 Duties—State ombudsman. The state long-term care ombudsman shall assure performance of the following duties:

(1) Identify, investigate, and resolve complaints that:

(a) Relate to actions, inactions, or decisions that may adversely affect the health, safety, welfare, or rights of residents;

(b) Are made by:

(i) A resident, a resident's relatives, friends, or associates;

(ii) Providers, or representatives of providers, of long-term care or health care services;

(iii) Public agencies;

(iv) Health and social service agencies; or

(v) Guardians, representative payees, holders of powers of attorney, or other resident representatives;

(2) In coordination with the appropriate state or local government agencies, develop referral procedures for all long-term care ombudsmen to refer complaints when necessary to any appropriate state or local government agency; such referral procedures must conform to the appropriate state law for referring reports of potential abuse, neglect, exploitation or abandonment and shall contain wherever possible the information specified in the appropriate state reporting laws and shall not abridge the confidentiality requirements of this chapter;

(3) Offer and provide services to assist residents and their representatives in protecting the health, safety, welfare, and rights of the residents;

(4) Inform the residents, their representatives and others about resident rights and about the means of obtaining needed services, and work with the department of social and health services and long-term care facility administrators to assure that notices containing the name, address, and telephone number of the appropriate long-term care ombudsman are posted prominently in every long-term care facility;

(5) Ensure that residents and their representatives have regular and timely access to the services provided through the ombudsman program, and ensure that the residents and complainants receive timely responses from representatives of the ombudsman program. Provision shall be made by facilities and the ombudsman to secure privacy for the purpose of the ombudsman carrying out his or her duties, including, but not limited to, building relationships with and providing information to residents;

(6) Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents;

(7)(a) Analyze, comment on, and monitor the development and implementation of federal, state, and local laws, regulations, and other governmental policies and actions, that pertain to the health, safety, welfare, and rights of the residents, with respect to long-term care facilities and services in the state;

(b) Recommend changes in laws, regulations, policies, and actions that will further promote the interests, well-being and rights of residents;

(c) Provide such information as the state office determines to be necessary to public and private agencies, legislators, and other persons, regarding:

(i) The problems and concerns of individuals residing in long-term care facilities; and

(ii) Recommendations related to these problems and concerns; and

(d) Facilitate public comment on laws, regulations, policies, and actions related to residents of long-term care facilities and the ombudsman program;

(8)(a) Establish procedures for the training and supervision of prospective regional long-term care ombudsmen, regional long-term care staff ombudsmen, and certified volunteer ombudsmen, and ensure that all ombudsmen are educated in the fields of long-term care and advocacy, including, but not limited to, conflict resolution, laws that govern long-term care resident populations, and issues in long-term care facilities pertaining to residents with mental illness, dementia, developmental and physical disabilities, and substance abuse problems;

(b) Monitor and provide administrative and policy direction and technical assistance to the regional long-term care ombudsmen; and

(c) Coordinate the activities of long-term care ombudsmen throughout the state;

(9)(a) Promote the development of citizen groups to participate in the ombudsman program; and

(b) Provide support for the development of resident councils and family councils to protect the interests, well-being and rights of residents;

(10) Assure that representative stakeholder advisory councils are established and maintained for the state and regional ombudsman programs. All councils should include representation from a broad spectrum of interests served by the program, including, but not limited to, mental illness, dementia, and developmental and physical disabilities. All vacancies to councils should be filled where possible within six months of the vacancy;

(11) Coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness including making appropriate referrals, and with legal services funded under Title III of the Older Americans Act, through the development of memoranda of understanding and other means;

(12) Establish a grievance ~~((procedure for the purpose of providing an appeal))~~ process for ~~((any individual dissatisfied with))~~ the receipt and review of grievances regarding the determinations or actions of any long-term care ombudsman. The ((highest level of appeal shall be the contractor and)) grievance process shall include notification to the long-term care ombudsman with a copy delivered to the contractor's governing board. Such process shall include an opportunity for reconsideration of any decision of the state long-term care ombudsman to grant, refuse, suspend, or remove the designation and certification of an individual long-term care ombudsman or a regional long-term care ombudsman program. Notwithstanding the grievance process, the state long-term care ombudsman shall make the final determination to grant, refuse, suspend, or remove the designation and certification of an individual long-term care ombudsman or a regional long-term care ombudsman program. The grievance ~~((procedure))~~ process is not intended to supplant any contracting or subcontracting agency's internally established grievance procedure for ~~((disputes))~~ grievances not related to ombudsman duties;

(13) Establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems;

(14) Prepare an annual report:

(a) Describing the activities carried out by the ombudsman program in the prior year;

(b) Evaluating the problems experienced by, and the complaints made by, or on behalf of, residents;

(c) Containing recommendations for:

(i) Improving quality of the care and life of the residents; and

(ii) Protecting the health, safety, welfare, and rights of the residents;

(d)(i) Analyzing the success and needs of the ombudsman program, including the success or gaps in providing services to residents of long-term care facilities; and

(ii) Identifying barriers that prevent the optimal operation of the ombudsman program;

(e) Providing policy, regulatory, and legislative recommendations to solve identified problems, to resolve the complaints, to improve the quality of care and life of residents, to protect the health, safety, welfare, and rights of residents, and to remove the barriers; and

(f) Make available to the federal Commissioner on Aging, the governor, the Washington state legislature, the department of social and health services, the department of health, the department of community, trade, and economic development, and other appropriate governmental entities and interested members of the public, the annual report described in this subsection;

(15) The state long-term care ombudsman may subcontract for long-term care ombudsman services, including

regional long-term care ombudsman services, throughout the state. The state long-term care ombudsman has the authority to designate and certify regional long-term care ombudsmen. The state long-term care ombudsman has the authority to revoke, when good cause is shown, the subcontract or the designation and certification of the individual regional long-term care ombudsman;

(16) The state long-term care ombudsman has the authority to designate qualified individuals as certified volunteer long-term care ombudsmen representing the ombudsman program. Such individuals shall receive a certificate and picture identification card from the state office signed by the state long-term care ombudsman. The state long-term care ombudsman has the authority to revoke, when good cause is shown, this certification.

(17) Nothing in this chapter shall be construed to empower the state long-term care ombudsman or any other long-term care ombudsman with statutory or regulatory licensing or sanctioning authority.

WSR 21-02-039

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed December 29, 2020, 4:52 p.m., effective January 29, 2021]

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

Purpose: These rules ensure the proper implementation and enforcement of the Clean Energy Transformation Act (CETA), as provided for in RCW 19.405.100, and establish methodologies, reporting and planning requirements, and procedures for electric utilities subject to CETA. The rules: Establish reporting requirements for electric utilities to demonstrate compliance with CETA, establish content and process requirements for clean energy implementation plans, establish requirements for utilities to evaluate and track the equity and distributional effects of their clean energy transformation actions, provide a methodology for use if a utility exercises the cost limitation provision in RCW 19.405.060, provide a methodology for incorporating the cost of greenhouse gas emissions in resource evaluation and acquisition decisions, require that utilities adopt standards to ensure adequate and reliable electric service, establish verification approaches for various standards in CETA, provide standards for thermal renewable energy credits, and establish other requirements to ensure proper implementation and enforcement of CETA. The proposed rules apply to consumer-owned utilities, such as municipal utilities, public utility districts, and rural cooperative or mutual utilities. In some cases, the proposed rules also apply to investor-owned utilities.

Citation of Rules Affected by this Order: New 21.

Statutory Authority for Adoption: RCW 19.405.100, 19.405.060.

Adopted under notice filed as WSR 20-21-108 on October 21, 2020.

Changes Other than Editing from Proposed to Adopted Version: Corrected definition of "CEIP," clarified reporting of resources subject to WAC 194-40-340 by adding a cross-reference in WAC 194-40-040, clarified reporting by utilities using incremental cost compliance approach by adding a

cross-reference in WAC 194-40-040, clarified requirement to retire renewable energy credits to verify claims of renewable energy use by adding a clarifying statement in WAC 194-40-400. The department made these changes in response to comments received, to ensure clarity, consistency, and understanding by regulated entities, and to meet the intent of the statute.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 21, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 29, 2020.

Dave Pringle
Policy Advisor and
Rules Coordinator

NEW SECTION

WAC 194-40-022 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION

WAC 194-40-030 Definitions. Unless specifically provided otherwise, the terms defined in RCW 19.405.020 have the same meaning in this chapter.

"100% Clean electricity standard" means the standard established in RCW 19.405.050(1) and any requirements necessary for compliance with that standard.

"BPA" means the Bonneville Power Administration.

"CEIP" means a clean energy implementation plan prepared in compliance with RCW 19.405.060.

"GHG neutral compliance period" means each of the periods identified in RCW 19.405.040 (1)(a).

"GHG neutral standard" means the standard established in RCW 19.405.040(1) and any requirements necessary for compliance with that standard.

"Indicator" means an attribute, either quantitative or qualitative, of a condition, resource, program or related distribution investment that is tracked for the purpose of evaluating change over time.

"Interim performance period" means either of the following periods:

- (a) From January 1, 2022, until December 31, 2025; and
- (b) From January 1, 2026, until December 31, 2029.

"Interim target" means a target established in compliance with RCW 19.405.060 (2)(a)(i). An interim target may cover an interim performance period or a GHG neutral compliance period.

"REC" means renewable energy credit.

"Retail revenue requirement" means that portion of a utility's annual budget approved by its governing body that is intended to be recovered through retail electricity sales in the state of Washington in the applicable year. It includes revenues from any retail rate or charge that is necessary to receive electric service from the utility and does not include the effect of taxes imposed directly on retail customers.

"Verification protocol" means a procedure or method used, consistent with industry standards, to establish with reasonable certainty that a conservation, energy efficiency, or demand response measure was installed and is in service. Industry standards include a range of appropriate protocols reflecting a balance of cost and accuracy, such as tracking installation of measures through incentive payments and the use of on-site inspection of measures installed as part of a customer-specific project.

"WREGIS" means the Western Renewable Energy Generation Information System.

NEW SECTION

WAC 194-40-040 Performance and compliance reporting for the GHG neutral standard and 100% clean electricity standard. (1) Each consumer-owned utility and each investor-owned utility must submit an interim performance report by July 1, 2026, and by July 1, 2030, documenting the utility's progress during the prior interim performance period in reaching compliance with the GHG neutral standard beginning in 2030.

(2) Each consumer-owned utility and each investor-owned utility must submit a compliance report by July 1, 2034, and within six months of the end of each subsequent GHG neutral compliance period, documenting the utility's compliance with the GHG neutral standard during the GHG neutral compliance period and its progress in reaching compliance with the 100% clean electricity standard beginning in 2045.

(3) Each consumer-owned utility and each investor-owned utility must submit a compliance report by July 1, 2046, and by July 1st of each year thereafter, documenting the utility's compliance with the 100% clean electricity standard.

(4) Each report required under subsections (1) and (2) of this section must be submitted using a form provided by commerce and must include the following information for the relevant interim performance period or GHG neutral compliance period:

(a) The amount of renewable resources and nonemitting electric generation used during the period, as a percentage of retail electric loads, compared to the target amount established and reported in the CEIP of the utility for that period.

(b) The amount of conservation and energy efficiency resources acquired during the period, compared to the target amount established and reported in the CEIP of the utility for that period.

(c) The amount of demand response resources acquired during the period, compared to the target amount established and reported in the CEIP of the utility for that period.

(d) The amount of electricity used from renewable resources, in megawatt-hours, compared to the target amount established and reported in the CEIP of the utility for that period.

(e) The amount of electricity used from nonemitting resources, in megawatt-hours over the period.

(f) Identification of any resources subject to the requirements of WAC 194-40-340 and acquired during the period and demonstration that the acquisition was consistent with the requirements of WAC 194-40-340.

(g) A detailed report of any use of each of the following alternative compliance options:

- (i) Alternative compliance payments;
- (ii) Unbundled renewable energy credits;
- (iii) Credits from energy transformation projects;
- (iv) Electricity from the Spokane municipal solid waste to energy facility (if it is determined to provide a net reduction in GHG emissions).

(h) A report to demonstrate whether and how, consistent with RCW 19.405.040(8) and the utility's CEIP for the period, all customers are benefiting from the transition to clean energy. The report must provide:

- (i) Results for each indicator established in the CEIP;
- (ii) An explanation of how the specific actions taken by the utility are consistent with the requirements in RCW 19.405.040(8); and
- (iii) An analysis of whether the forecasted distribution of benefits and reductions of burdens accrued or are reasonably expected to accrue to highly impacted communities, vulnerable populations, and all other customers.

(i) For each specific action identified in the CEIP for the period, pursuant to WAC 194-40-200(1), a summary of the actions taken and their results.

(j) For any measurement of achievement reported under (a) through (e) of this subsection that is less than the respective target established in the CEIP, an explanation of the variation from target and any intended actions to offset the variation in the next period.

(k) The information required under WAC 194-40-230 (4), if the utility relied on the incremental cost provision in RCW 19.405.060 (4)(a) during the period.

(l) Any other information necessary to demonstrate compliance with the requirements of CETA that are applicable during the period.

NEW SECTION

WAC 194-40-050 Submission of clean energy implementation plan. (1) Each utility must submit by January 1, 2022, and every four years thereafter, a CEIP for resources to be acquired and other actions to be undertaken during the next interim performance period or GHG neutral compliance period to comply with the GHG neutral standard and the 100% electricity clean standard. The CEIP must be submitted using a form provided by commerce.

(2) Each utility must submit with its CEIP a summary of the public input process conducted in compliance with WAC

194-40-220 and a description of how public comments were reflected in the specific actions under WAC 194-40-200(4), including the development of one or more indicators and other elements of the CEIP and the utility's supporting integrated resource plan or resource plans, as applicable.

NEW SECTION

WAC 194-40-060 Reporting fuel mix and greenhouse gas emission. (1) Each consumer-owned utility and each investor-owned utility must submit by July 1, 2021, and each year thereafter, a fuel mix source and disposition report for the previous calendar year, consistent with RCW 19.29A.140, using a form provided by commerce.

(2) Each utility must submit by July 1, 2021, and each year thereafter, a greenhouse gas content calculation for the previous calendar year.

(a) The greenhouse gas content calculation must be based on the quantities and fuel sources, including unspecified sources, of electricity identified in the source and disposition report required under subsection (1) of this section and must include all generating resources providing service to retail customers of that utility in Washington state, regardless of the location of the generating resource.

(b) The greenhouse gas content calculation must comply with the calculation requirements established by the department of ecology in chapter 173-444 WAC.

NEW SECTION

WAC 194-40-110 Methodologies to incorporate social cost of greenhouse gas emissions. (1)(a) Each utility must incorporate the social cost of greenhouse gas emissions as a cost adder for all relevant inputs when evaluating and selecting conservation policies, programs, and targets; developing integrated resource plans and clean energy action plans; and evaluating and selecting intermediate term and long-term resource options.

(b) The greenhouse gas emissions cost adder may be adjusted to account for any explicit tax or fee on greenhouse gas emissions that is known or assumed in the resource analysis.

(2) A utility may comply with the requirements of subsection (1) of this section by using one of the following analytical approaches, as appropriate and consistent with the utility's overall analytical approach for resource planning, evaluation, and selection:

(a) Performing a resource analysis in which it increases the input cost of each fossil fuel by an amount equal to the social cost of greenhouse gas emissions value of that fuel;

(b) Conducting a resource analysis in which alternative resource portfolios are compared across multiple scenarios on the basis of cost, risk, and other relevant factors and the aggregate social cost of greenhouse gas emissions is added to the cost of each resource portfolio;

(c) If the utility does not use a comprehensive resource portfolio evaluation and optimization approach: Adding the social cost of greenhouse gas emissions to the expected market price of electricity, using an estimate of the emissions rate of marginal generating resources; or

(d) Using another analytical approach that includes a comprehensive accounting of the difference in greenhouse gas emissions and social cost of greenhouse gas emissions between resource alternatives.

(3) Any methodology used to comply with this rule may assume that the social cost of greenhouse gas emissions cost adder does not affect short-term operations or dispatch decisions after energy resources are acquired and placed into service.

(4) Any methodology used to comply with this rule must ensure that the social cost of greenhouse gas emissions cost adder is accounted for without unreasonable duplication or double counting.

(5) The social cost of greenhouse gas emissions values used to meet the requirements of this chapter are specified in WAC 194-40-100.

NEW SECTION

WAC 194-40-200 Clean energy implementation plan. (1) **Specific actions.** Each utility must identify in each CEIP the specific actions the utility will take during the next interim performance period or GHG neutral compliance period to demonstrate progress toward meeting the standards under RCW 19.405.040(1) and 19.405.050(1) and the interim targets under subsection (2) of this section and the specific targets under subsection (3) of this section. Specific actions must be consistent with the requirements of RCW 19.405.060 (2)(a)(iv).

(2) **Interim target.** The CEIP must establish an interim target for the percentage of retail load to be served using renewable and nonemitting resources during the period covered by the CEIP. The interim target must demonstrate progress toward meeting the standards under RCW 19.405.040(1) and 19.405.050(1), if the utility is not already meeting the relevant standard.

(3) **Specific targets.** The CEIP must establish specific targets, for the interim performance period or GHG neutral compliance period covered by the CEIP, for each of the following categories of resources:

(a) **Energy efficiency.**

(i) The CEIP must establish a target for the amount, expressed in megawatt-hours of first-year savings, of energy efficiency resources expected to be acquired during the period. The energy efficiency target must comply with WAC 194-40-330(1).

(ii) A utility may update its CEIP to incorporate a revised energy efficiency target to match a biennial conservation target established by the utility under RCW 19.285.040 (1)(b) and WAC 194-37-070.

(b) **Demand response resources.** The CEIP must specify a target for the amount, expressed in megawatts, of demand response resources to be acquired during the period. The demand response target must comply with WAC 194-40-330(2).

(c) **Renewable energy.** The utility's target for renewable energy must identify the quantity in megawatt-hours of renewable electricity to be used in the period.

(4) **Specific actions to ensure equitable transition.** To meet the requirements of RCW 19.405.040(8), the CEIP must, at a minimum:

(a) Identify each highly impacted community, as defined in RCW 19.405.020(23), and its designation as either:

(i) A community designated by the department of health based on cumulative impact analyses; or

(ii) A community located in census tracts that are at least partially on Indian country.

(b) Identify vulnerable populations based on the adverse socioeconomic factors and sensitivity factors developed through a public process established by the utility and describe and explain any changes from the utility's previous CEIP, if any;

(c) Report the forecasted distribution of energy and non-energy costs and benefits for the utility's portfolio of specific actions, including impacts resulting from achievement of the specific targets established under subsection (3) of this section. The report must:

(i) Include one or more indicators applicable to the utility's service area and associated with energy benefits, nonenergy benefits, reduction of burdens, public health, environment, reduction in cost, energy security, or resiliency developed through a public process as part of the utility's long-term planning, for the provisions in RCW 19.405.040(8);

(ii) Identify the expected effect of specific actions on highly impacted communities and vulnerable populations and the general location, if applicable, timing, and estimated cost of each specific action. If applicable, identify whether any resource will be located in highly impacted communities or will be governed by, serve, or otherwise benefit highly impacted communities or vulnerable populations in part or in whole; and

(iii) Describe how the specific actions in the CEIP are consistent with, and informed by, the utility's longer-term strategies based on the analysis in RCW 19.280.030 (1)(k) and clean energy action plan in RCW 19.280.030 (1)(l) from its most recent integrated resource plan, if applicable.

(d) Describe how the utility intends to reduce risks to highly impacted communities and vulnerable populations associated with the transition to clean energy.

(5) **Use of alternative compliance options.** The CEIP must identify any planned use during the period of alternative compliance options, as provided for in RCW 19.405.040 (1) (b).

(6) The CEIP must be consistent with the most recent integrated resource plan or resource plan, as applicable, prepared by the utility under RCW 19.280.030.

(7) The CEIP must be consistent with the utility's clean energy action plan developed under RCW 19.280.030(1) or other ten-year plan developed under RCW 19.280.030(5).

(8) The CEIP must identify the resource adequacy standard and measurement metrics adopted by the utility under WAC 194-40-210 and used in establishing the targets in its CEIP.

(9) If the utility intends to comply using the two percent incremental cost approach specified in WAC 194-40-230, the CEIP must include the information required in WAC 194-40-230(3) and, if applicable, the demonstration required in WAC 194-40-350(2).

(10) Any utility that is not subject to RCW 19.280.030 (1) may meet the requirements of this section through a simplified reporting form provided by commerce.

NEW SECTION

WAC 194-40-210 Resource adequacy standard. (1)

Each utility that is required to prepare an integrated resource plan under RCW 19.280.030(1) must establish by January 1, 2022, a standard for resource adequacy to be used in resource planning, including assessing the need for and contributions of generating resources, storage resources, demand response resources, and conservation resources. The resource adequacy standard must be consistent with prudent utility practices and relevant regulatory requirements and must include reasonable and nondiscriminatory:

- (a) Measures of adequacy, such as peak load standards and loss of load probability or loss of load expectation;
- (b) Methods of measurement, such as probabilistic assessments of resource adequacy; and
- (c) Measures of resource contribution to resource adequacy, such as effective load carrying capability applicable to all resources available to the utility including, but not limited to, renewable, storage, hybrid, and demand response resources.

NEW SECTION

WAC 194-40-230 Compliance using two percent incremental cost of compliance. (1) For any period in which a utility relies on RCW 19.405.060 (4)(a) to meet an interim target during an interim performance period or as the basis for compliance with the standard under RCW 19.405.040(1) or 19.405.050(1), the utility must:

- (a) Document, as provided in this section, incremental costs that are directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050; and
- (b) Demonstrate that the average annual incremental costs identified under (a) of this subsection are at least equal to an annual threshold amount that would result from a two percent revenue increase at the beginning of each year of the period, divided by the number of years in the period. For a period consisting of four years, the mathematical formula for the annual threshold amount is:

$$\text{Annual Threshold Amount} = \frac{(RR_0 \times 2\% \times 4) + (RR_1 \times 2\% \times 3) + (RR_2 \times 2\% \times 2) + (RR_3 \times 2\%)}{4}$$

Where *RR* indicates retail revenue requirement and the numerical subscript indicates the year of the period.
Example calculation of annual threshold amount:

| Year | Retail Revenue Requirement | Annual Amount from Revenue Increase Equal to 2% of Prior Year Revenue Requirement | Number of Years in Effect | Threshold Amount over Four Years | Sum of Threshold Amounts | Annual Threshold Amount |
|---|----------------------------|---|---------------------------|----------------------------------|--------------------------|-------------------------|
| 0 | \$100 | | | | | |
| 1 | \$105 | \$2.00 | 4 | \$8.00 | \$21.00 | \$5.30 |
| 2 | \$110 | \$2.10 | 3 | \$6.30 | | |
| 3 | \$115 | \$2.20 | 2 | \$4.40 | | |
| 4 | \$120 | \$2.30 | 1 | \$2.30 | | |
| Annual Threshold Amount as a Percentage of Average Retail Revenue Requirement | | | | | | 4.7% |

(2) For the purposes of compliance using RCW 19.405.060 (4)(a), a cost is directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050 only if all of the following conditions are met:

- (a) The cost is incurred during the period;
- (b) The cost is part of the lowest reasonable cost and reasonably available portfolio of resources that results in compliance with RCW 19.405.040 and 19.405.050;

(2) Each utility not subject to subsection (1) of this section must identify by January 1, 2022, the resource adequacy standard relied on by the utility in preparing its resource plan and CEIP.

(3) In each CEIP submitted after 2022, each utility must identify and explain any changes to its resource adequacy standard.

NEW SECTION

WAC 194-40-220 Public input for planning. (1) Each utility must provide reasonable opportunities for its customers and interested stakeholders to provide input to the utility during the development of, and prior to the adoption of, plans identifying actions to comply with RCW 19.405.040(8) and other requirements of RCW 19.405.040 and 19.405.050. A utility may use a single coordinated public input process in the development of its clean energy implementation plan, its integrated resource plan or resource plan, as applicable, and its clean energy action plan or 10-year action plan, as applicable.

(2) In assessing whether a public input opportunity is reasonable, the utility must consider barriers to public participation due to language, cultural, economic, technological, or other factors consistent with community needs.

(c) The cost is additional to the costs that would be incurred for the lowest reasonable cost and reasonably available resource portfolio that would have been selected in the absence of RCW 19.405.040 and 19.405.050; and

(d) The cost is not required to meet any statutory, regulatory, or contractual requirement or any provision of chapter 19.405 RCW other than sections RCW 19.405.040 or 19.405.050.

(3) A utility using the compliance method in this rule must include in its CEIP for the period the following information:

(a) Identification of all costs that it intends to incur during the period in order to comply with the requirements of RCW 19.405.040 and 19.405.050;

(b) Demonstration that the costs identified in (a) of this subsection are directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050; and

(c) Documentation of the expected cost of the utility's planned resource portfolio and the expected cost of the alternative lowest reasonable cost and reasonably available portfolio.

(4) The utility must include in the compliance report required by WAC 194-40-040 the following:

(a) Documentation by year of the actual and lowest reasonable costs incurred during the period for the costs identified in subsection (1)(a) of this section.

(b) Documentation by year of the costs that the utility would have incurred to acquire the alternative lowest reasonable cost and reasonably available portfolio of investments.

(c) A calculation of the average annual incremental costs by summing the differences between costs reported in (a) of this subsection and costs reported in (b) of this subsection and dividing by the number of years in the period.

(d) A comparison demonstrating that average annual incremental costs for the period, calculated as specified in (c) of this subsection, equal or exceed the annual threshold amount calculated as specified in subsection (1)(b) of this section.

(5) If a resource included in an actual or alternative portfolio has a useful life or contract duration of greater than one year, the cost of that resource must be allocated over the expected useful life or contract duration using a levelized cost or fixed charge factor.

(6) The CEIP must substantiate the information required in subsection (3) of this section using a comprehensive assessment of alternative resource portfolios, such as an integrated resource plan prepared in compliance with chapter 19.280 RCW.

(7) A utility must include in all cost calculations under this rule the effects on resource selection and acquisition of the social cost of greenhouse gas emissions cost adder requirement under WAC 194-40-110. A utility may not include in the cost calculations any greenhouse gas emissions costs, fees, or taxes unless customers will pay those amounts through their electricity purchases.

(8) As used in this rule, "period" means the years covered by each CEIP developed in compliance with RCW 19.405.060(2).

NEW SECTION

WAC 194-40-300 Documentation concerning coal-fired resources. (1) Each utility must publish by June 1, 2027, and each year thereafter, an attestation by a properly authorized representative of the utility certifying that the utility's allocation of electricity for Washington retail electric load in the prior calendar year did not include any electricity generated at a coal-fired resource. The utility must provide additional documentation as the auditor may require.

(2) A transaction to purchase electricity, where the source is unknown at the time of purchase, for a term not to exceed thirty-one days, is not a coal-fired resource for the purposes of this rule.

(3) A utility must not engage in a series or combination of short-term transactions for unspecified electricity for the purpose of avoiding the restrictions on use of coal-fired resources under RCW 19.405.030(1).

NEW SECTION

WAC 194-40-310 Documentation of nonemitting electric generation. (1) Any utility using nonemitting electric generation to comply with a requirement under RCW 19.405.040 or 19.405.050 must demonstrate that it owns the nonpower attributes of that electricity and that it has committed to use the nonpower attributes exclusively for the stated compliance purpose.

(2) A utility may demonstrate ownership of nonpower attributes using contractual records or attestations of ownership and transfer by properly authorized representatives of the generating facility, all intermediate owners of the nonemitting electric generation, and a properly authorized representative of the utility.

(3) A utility may demonstrate ownership of the nonpower attributes of the nuclear portion of BPA's electricity product by relying on a representation of a properly authorized representative of BPA stating the nonemitting percentage of its electricity product and verifying that BPA did not separate the nonpower attributes associated with the nuclear generation.

NEW SECTION

WAC 194-40-330 Methodologies for energy efficiency and demand response resources. (1) **Energy efficiency resources.**

(a) Assessment of potential:

(i) Any utility that is a qualifying utility under chapter 19.285 RCW must assess the amount of energy efficiency and conservation that is available using the conservation methodology established in RCW 19.285.040(1) and the rules implementing that subsection. The analysis must include the social cost of greenhouse gas emissions as specified in WAC 194-40-110.

(ii) Any utility that is not a qualifying utility under chapter 19.285 RCW must establish the amount of energy efficiency and conservation that is available using either of the following methods:

(A) Use the conservation methodology established in RCW 19.285.040(1) and the rules implementing that subsection; or

(B) Establish the reasonable utility-level proportion of a conservation potential assessment prepared at a regional or multi-utility level using a methodology that:

(I) Evaluates resource alternatives on a total resource cost basis, in which all costs and all benefits of conservation measures are included regardless of who pays the costs or receives the benefits; and

(II) Includes the social cost of greenhouse gas emissions as specified in WAC 194-40-110.

(b) **Target.** The energy efficiency target for any interim performance period or GHG neutral compliance period must equal or exceed the target that would be calculated using the pro rata share approach specified in RCW 19.285.040 (1)(b) and must be sufficient to ensure that the utility meets its obligation under RCW 19.405.040(6) to pursue all cost-effective, reliable, and feasible conservation and energy efficiency resources.

(c) **Measurement and verification.** All energy efficiency and conservation resources used to meet an energy efficiency target must be measured and verified using the measurement and verification requirements of WAC 194-37-080 (3) and (4).

(2) **Demand response resources:**

(a) **Assessment of potential.** Each utility must assess the amount of demand response resource that is cost-effective, reliable, and feasible.

(b) **Target.** The demand response target for any compliance period must be sufficient to meet the utility's obligation under RCW 19.405.040(6) and must be consistent with the utility's integrated resource plan or resource plan and any distributed energy resource plan adopted under RCW 19.280-100.

(c) **Measurement and verification.** Each utility must maintain and apply measurement and verification protocols to determine the amount of capacity resulting from demand response resources and to verify the acquisition or installation of the demand response resources being recorded or claimed. The utility must document the methodologies, assumptions, and factual inputs used in its measurement and verification of demand response resources.

NEW SECTION

WAC 194-40-340 Acquisition of new resources other than renewable resources and energy storage. A utility that acquires a new fossil fuel generating resource or new nonemitting electric generation must document through its integrated resource plan and any other analysis relied on in making its decision that the resource acquisition is consistent with meeting the utility's targets under RCW 19.405.040 or the standard in RCW 19.405.050 at the lowest reasonable cost, considering risk. For the purposes of this chapter, a resource that commenced operation on or before May 7, 2019, is not a new resource.

NEW SECTION

WAC 194-40-350 Use of alternative compliance options by utilities using two percent incremental cost threshold. (1) Except as provided in subsection (2) of this section, a utility may not use any alternative compliance option under RCW 19.405.040 (1)(b) in any GHG neutral compliance period if it relies on RCW 19.405.060 (4)(a) as the basis for compliance with the standard under RCW 19.405.040(1) or 19.405.050(1).

(2) A utility relying on RCW 19.405.060 (4)(a) may use an alternative compliance option if:

(a) The utility demonstrates that no renewable resources or nonemitting electric generation was reasonably available; or

(b) The utility uses renewable resources and nonemitting electric generation in an amount equal to at least eighty percent of its annual retail electric load during the period.

NEW SECTION

WAC 194-40-360 Temporary exemption, demonstration of plan to achieve full compliance. (1) A utility must notify commerce at least thirty days prior to consideration of action by the governing body to authorize a temporary exemption under RCW 19.405.090 (5)(a). The notice must provide all information that the governing body will rely on in making a decision whether to authorize a temporary exemption.

(2) If the governing body of a utility authorizes a temporary exemption under RCW 19.405.090 (5)(a), the governing body must notify commerce within thirty days of the action. The governing body's notice must include a plan to take specific actions to achieve full compliance with RCW 19.405-040(1).

NEW SECTION

WAC 194-40-400 Documentation and retirement of renewable energy credits. (1) The Western Renewable Energy Generation Information System is the renewable energy credit tracking system for purposes of verification of RECs under chapter 19.405 RCW.

(2)(a) Except as provided in (b) of this subsection, each utility must verify and document by the retirement of RECs all electricity from renewable resources used to meet a target in an interim performance period or to comply with the requirements of RCW 19.405.040 or 19.405.050.

(b) A utility is not required to comply with (a) of this subsection for electricity from renewable resources used to meet a target in an interim performance period if:

(i) The energy source for the generating facility is water;

(ii) The generating facility is not registered in WREGIS or the WREGIS account holder for the generating facility verifies that no RECs have been created for the electricity used to meet CETA requirements; and

(iii) The utility owned the generating facility or purchased the electricity directly from the owner of the facility or, in the case of federal generating facilities, from BPA.

(3) Each utility using a REC under this chapter must document the following:

(a) The REC represents the output of a renewable resource;

(b) The vintage of the REC is a year within the applicable performance period or compliance period; and

(c) The utility has retired the REC to a retirement subaccount of the utility within WREGIS using the following values in the certificate transfer:

(i) Retirement type: Used by the account holder for a state-regulated renewable portfolio standard/provincial utility portfolio standard;

(ii) State/province: Washington; and

(iii) Compliance year: Within the applicable performance period or compliance period.

(4) A utility may use any REC retired to comply with RCW 19.285.040 for the purposes identified in subsection (2) of this section if the compliance year indicated in the retirement documentation of the REC is within the compliance period of the standard or target identified in subsection (2) of this section.

(5) This rule does not require the retirement of RECs identified in a CEIP and not otherwise used to meet an interim target or to comply with the requirements of RCW 19.405.040 or 19.405.050.

NEW SECTION

WAC 194-40-430 Thermal RECs—Applicability. (1)

A thermal renewable energy credit may be used as an unbundled REC under RCW 19.405.040 (1)(b) if it is created in association with the generation of qualifying thermal energy for a secondary purpose at a facility that generates electricity from biomass energy. For multiple-fuel facilities, only the portion of thermal energy generated from eligible biomass sources is eligible for the generation of a thermal REC.

(2) Thermal energy may not be used to create a thermal REC if the thermal energy:

(a) Is used to operate the generating facility or process the facility's fuel;

(b) Is returned to the biomass conversion device that initially created the eligible thermal resource;

(c) Bypasses the electricity generation device; or

(d) Is produced while the electricity generation equipment is out of service.

NEW SECTION

WAC 194-40-440 Thermal RECs—Measuring. (1)

Qualifying thermal energy must be measured and tracked using the following methods:

(a) **Large facilities:** Facilities with the capacity to generate one or more thermal RECs per hour of operation must install a thermal energy measurement system to continually measure qualifying thermal energy. The thermal energy delivered to the secondary purpose must be metered. All parameters needed to determine thermal energy delivered to the secondary purpose must be directly measured.

(b) **Small facilities:** Facilities with the capacity to generate less than one thermal REC per hour of operation must install a thermal energy measurement system to measure qualifying thermal energy delivered to the secondary purpose. Calculation parameters, such as heat capacity, and

directly measured parameters, such as temperature and pressure, that do not vary more than two percent for the full range of expected operating conditions may be evaluated on an annual basis and used in the calculation methodology as a constant. These parameters may be based on such sources as manufacturers' published ratings or one-time measurements, but must be clearly defined and explained in the thermal energy measurement plan required under subsection (2) of this section. All other parameters used to determine the amount of qualifying thermal energy must be continually measured. The generating facility must assess the significance of any potential error that the methodology parameters have on the total annual quantity of qualifying thermal energy and include this analysis in the thermal energy measurement plan. The generating facility must also submit to the department for approval in the thermal energy measurement plan an appropriate discount factor to be applied to the qualifying thermal energy calculation methodology, and the department may revise this discount factor to account for variance due to parameters that are not continually measured.

(c) Any thermal energy measurement system used to comply with this rule must capture sufficient data, and make necessary calculations or provide all necessary data for calculations to be made using standard engineering calculation procedures, to determine the net thermal energy used by the secondary purpose over an interval specified in the thermal energy measurement plan.

(d) The components of a thermal energy measurement system must be installed in accordance with the manufacturer's specifications.

(2) The operator of a thermal energy generating facility must submit to the department for its approval a thermal energy measurement plan that:

(a) Describes the thermal energy generating equipment, secondary purposes, data measurements to be collected, all associated measurement devices, data formats and storage, data gathering techniques, measurement system calibration, calculation methodology, discount factors, and other relevant equipment and activities that will be used to determine the quantity of qualifying thermal energy.

(b) Includes documentation, including drawings, specifications, piping and instrumentation diagrams, and other information, sufficient to verify the compliance of the system with the requirements of this rule.

(c) Is prepared by or under the supervision of a licensed professional engineer, as indicated by the engineer's stamp.

(3) The operator of a thermal energy generating facility must submit an updated thermal energy measurement plan and documentation for review and approval to the department upon the following:

(a) Installation, removal or changes in the configuration of the thermal energy measurement system and its components;

(b) Installation of new thermal energy generation equipment or changes in thermal energy generation capacity;

(c) Installation or removal of secondary purpose equipment, changes to secondary purpose use, or changes in the secondary purpose maximum thermal energy demand; or

(d) Indications the thermal energy measurement system is not performing in accordance with the thermal energy measurement plan.

NEW SECTION

WAC 194-40-450 Thermal RECs—Tracking. (1)

Where continual measurements are required to determine the quantity of qualifying thermal energy, the operator of the thermal energy generating facility must take data readings at least once per hour, or more frequently as necessary to capture irregular or frequently varying parameters. For all facilities, the qualifying thermal energy produced must be totaled for each twenty-four-hour period, each month, and each quarter.

(2) The operator of the generating facility must retain measured data and related thermal energy calculations on-site for five calendar years and make records available for audit.

(3) Prior to measuring qualifying thermal energy for the purpose of generating thermal RECs, the operator of the generating facility must perform, or have performed, an initial calibration of the thermal energy measurement system and all associated measurement devices, or demonstrate that a calibration has been performed as specified by system component manufacturers or within the last three hundred sixty-five days of the application date for certification as compliant with these rules. All measurement devices shall be recalibrated annually or as specified by system component manufacturers to maintain specified accuracy. Calibrations must be performed using the calibration procedures specified by the meter manufacturer, calibration methods published by a consensus-based standards organization, or other industry accepted practice.

(4) Individuals designing, installing, operating, and maintaining the thermal energy measurement system must have appropriate training and certification. The generating facility must maintain documentation of maintenance and calibration activities.

NEW SECTION

WAC 194-40-460 Thermal RECs—Reporting. All thermal RECs are subject to the requirements of WAC 194-40-400.

WSR 21-02-050

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Denturists)

[Filed January 4, 2021, 10:53 a.m., effective February 4, 2021]

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

Purpose: The board of denturists repealed licensure requirements in chapter 246-812 WAC for AIDS education and training in response to the repeal of RCW 70.24.270 per ESHB 1551. The repealed requirements include WAC 246-812-010(1) Definitions, 246-812-120(6) Denturist licensure—Eligibility and application requirements, 246-812-

125(6) Denturist—Endorsement, and 246-812-161 (3)(c)(vii) Inactive license.

Citation of Rules Affected by this Order: Repealing WAC 246-812-010(1), 246-812-120(6), 246-812-125(6) and 246-812-161 (3)(c)(vii).

Statutory Authority for Adoption: RCW 18.30.065.

Other Authority: ESHB 1551 (chapter 76, Laws of 2020).

Adopted under notice filed as WSR 20-19-127 on September 22, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 4.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 4.

Date Adopted: November 6, 2020.

Trina Crawford
Executive Director

AMENDATORY SECTION (Amending WSR 20-04-028, filed 1/28/20, effective 2/28/20)

WAC 246-812-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) (~~"Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV related illness as defined by the board of health by rule.~~

~~(2))~~ "Approval" and "accreditation" are used interchangeably with reference to sanctioning of courses.

~~((3))~~ (2) "Bruxism" means the excessive grinding of the teeth or excessive clenching of the jaw.

AMENDATORY SECTION (Amending WSR 20-04-028, filed 1/28/20, effective 2/28/20)

WAC 246-812-120 Denturist licensure—Eligibility and application requirements. An applicant for a denturist license shall submit to the board:

(1) A completed application;

(2) The application fee required under WAC 246-812-990;

(3) Verification of passing both a board-approved written examination and a practical examination which includes a practical demonstration of skills;

(4) Verification of having passed the online jurisprudence examination; and

(5) An official transcript from an educational institution approved by the board(~~;~~ and

~~(6) Verification of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8).~~

AMENDATORY SECTION (Amending WSR 20-04-028, filed 1/28/20, effective 2/28/20)

WAC 246-812-125 Denturist licensure—Endorsement. An applicant for licensure who is currently licensed to practice denturism in another state, territory of the United States, District of Columbia, or Puerto Rico, that the board has determined has substantially equivalent licensing standards including written and clinical examinations, shall submit to the board:

- (1) A completed application;
- (2) The application fee required in WAC 246-812-990;
- (3) An official transcript from an educational program approved by the board;
- (4) Verification of successful completion of board-approved examinations that include:
 - (a) A written examination that contains the topics listed in RCW 18.30.100(4);
 - (b) A practical examination that includes a practical demonstration of skills; and
 - (c) The online jurisprudence examination~~((§)).~~
- (5) Current licensure in a jurisdiction approved by the board under RCW 18.30.090(1)~~((§) and~~
- ~~(6) Seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8).~~

AMENDATORY SECTION (Amending WSR 20-04-028, filed 1/28/20, effective 2/28/20)

WAC 246-812-161 Inactive license. (1) A licensed dentist may obtain an inactive license by meeting the requirements of WAC 246-12-090.

(2) An inactive license must be renewed every year on the dentist's birthday according to WAC 246-12-100 and pay the applicable fees according to WAC 246-812-990.

(3) A dentist with an inactive license may return to active status.

(a) If a license is inactive for three years or less, to return to active status the dentist shall meet the requirements of WAC 246-12-110 and pay the applicable fees in WAC 246-812-990;

(b) If a license is inactive for more than three years and the dentist has been actively practicing in a board-approved state, territory of the United States, District of Columbia, or Puerto Rico the dentist shall:

(i) Provide to the board primary source verification of the active dentist license, submitted directly from another licensing entity that includes:

- (A) License number;
- (B) Issue date;
- (C) Expiration date; and
- (D) Whether the dentist is or has been the subject of final or pending disciplinary action.

(ii) Provide to the board verification of current active practice in a board-approved state, territory of the United States, District of Columbia, or Puerto Rico for the last three years; and

(ii) Meet the requirements of WAC 246-12-110 and pay the applicable fees in WAC 246-812-990.

(c) If a license is inactive for more than three years, and the dentist has not been actively practicing in a board-approved state, territory of the United States, District of Columbia, or Puerto Rico the dentist shall provide to the board:

(i) A written request to change inactive licensure status to active status;

(ii) The applicable fees according to WAC 246-812-990;

(iii) Documentation of successful completion of the examinations as required in RCW 18.30.100;

(iv) Primary source verification of all dentist or health care licenses held, submitted directly from the licensing agency that includes:

(A) License number;

(B) Issue date;

(C) Expiration date; and

(D) Whether the practitioner is or has been the subject of final or pending disciplinary action.

(v) Written declaration that continuing competency requirements for the two most recent years have been met according to WAC 246-812-159; and

(vi) Proof of successful completion of the approved written jurisprudence examination within the past year~~((§) and~~

~~(vii) Proof of AIDS education according to WAC 246-817-120).~~

WSR 21-02-059

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed January 4, 2021, 2:37 p.m., effective February 4, 2021]

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

Purpose: Making editorial changes on the state amendments to the 2018 International Fire Code and moving into permanent rule making CR-105 WSR 20-21-096 as amended and adopted by the State Building Code Council on November 6, 2020.

Citation of Rules Affected by this Order: Amending 5.

Statutory Authority for Adoption: RCW 19.27.035.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 20-21-096 on October 20, 2020.

A final cost-benefit analysis is available by contacting Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email Richard.Brown@DES.wa.gov, website SBCC.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

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

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

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

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

Date Adopted: January 4, 2021.

Diane Glenn, Chair
State Building Code Council

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-0101 Section 101~~((Scope and general requirements))~~.

~~((101.2.1 Appendices. Provisions in the appendices shall not apply unless specifically adopted.))~~ **Reserved.**

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-0319 Mobile food preparation vehicles.

319.1 General. Mobile food preparation vehicles that are equipped with appliances that produce smoke or grease-laden vapors or utilize LP-gas systems or CNG systems shall comply with this ~~((system))~~ section.

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

WAC 51-54A-0401 General.

401.2 Approval. Where required by the fire code official, fire safety plans, emergency procedures and employee training programs shall be approved by the fire official.

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-0406 Employee training and response procedures.

406.1 General. Employees in the occupancies listed in Section 403 shall be trained in the emergency procedures described in their emergency plans. Training shall be based on these plans and as described in Section 406.2 ~~((and 406.3))~~ through 406.3.4.

406.2 Frequency. Employees shall receive training in the contents of the emergency plans and their duties as part of new employee orientation and at least annually thereafter. Records shall be kept and made available to the fire code official upon request.

406.3 Employee training program. Employees shall be trained in fire prevention, evacuation, sheltering-in-place, and fire safety in accordance with Sections 406.3.1 through ~~((406.3.3))~~ 406.3.4.

406.3.5 Emergency shelter-in-place training. Where a facility has a shelter-in-place plan, employees shall be trained on the alert and recall signals, communication system, location of emergency supplies, the use of the incident notification and alarm system, and their assigned duties and procedures in the event of an alarm or emergency.

~~((406.4 Emergency lockdown training. This section is not adopted.))~~

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-0609 ~~((Section 607—Commercial kitchen hoods.))~~ **Reserved.**

~~((607.2 Where required. A Type I hood shall be installed at or above all commercial cooking appliances and domestic cooking appliances used for commercial purposes that produce grease laden vapors.~~

- EXCEPTIONS:**
1. A Type I hood shall not be required for an electric cooking appliance where an approved testing agency provides documentation that the appliance effluent contains 5 mg/m³ or less of grease when tested at an exhaust flow rate of 500 cfm (0.236 m³/s) in accordance with Section 17 of UL 710B.
 2. A Type I hood shall not be required to be installed in an R-2 occupancy, an assisted living facility licensed under chapter 388-78A WAC, or a residential treatment facility licensed under chapter 246-337 WAC with not more than 16 residents.

607.2.1 Domestic cooking appliances used for commercial purposes. Domestic cooking appliances utilized for commercial purposes shall be provided with Type I, Type II or residential hoods as required for the type of appliances and processes in accordance with Table 607.2.1 or Sections 507.2 and 507.3 of the *International Mechanical Code*.

Table 607.2.1

Type of Hood Required for Domestic Cooking Appliances in the Following Spaces^{a,b}

| Type of Space | Type of Cooking | Type of Hood |
|--|---|--|
| Church | 1. Boiling, steaming and warming precooked food | Residential hood ^c or Type II hood |
| | 2. Roasting, pan-frying and deep-frying | Type I hood |
| Community or party room in apartment and condominium | 1. Boiling, steaming and warming precooked food | Residential hood ^c or Type II hood ^d |
| | 2. Roasting, pan-frying and deep-frying | Type I hood |

| Type of Space | Type of Cooking | Type of Hood |
|---|---|--|
| Day care | 1. Boiling, steaming and warming precooked food | Residential hood ^a or Type II hood ^d |
| | 2. Roasting, pan-frying and deep-frying | Type I hood |
| Dormitory, assisted living facility, nursing home | 1. Boiling, steaming and warming precooked food | Residential hood ^a or Type II hood |
| | 2. Roasting, pan-frying and deep-frying | Type I hood |
| Office lunch room | 1. Boiling, steaming and warming precooked food | Residential hood ^a or Type II hood ^d |
| | 2. Roasting, pan-frying and deep-frying | Type I hood |

^aCommercial cooking appliances shall comply with Section 507.2 of the *International Mechanical Code*.

^bRequirements in this table apply to electric or gas fuel appliances only. Solid fuel appliances or charbroilers require Type I hoods.

^cResidential hood shall ventilate to the outside.

^dType II hood required when more than one appliance is used.

^eHoods are not required where the HVAC design meets IMC 507.3.

~~607.3 Operations, inspection and maintenance. Commercial cooking systems shall be operated, inspected and maintained in accordance with Sections 607.3.1 through 607.3.4 and Chapter 11 of NFPA 96.)~~

**WSR 21-02-066
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed January 5, 2021, 7:53 a.m., effective April 1, 2021]

Effective Date of Rule: April 1, 2021.

Purpose: The pension discount rate (PDR) is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. The purpose of this rule making is to lower the PDR for annual investment returns for the reserve funds for self-insured employers.

This rule making reduces the self-insured pension discount rate from 5.9 percent to 5.8 percent.

Citation of Rules Affected by this Order: Amending WAC 296-14-8810.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Adopted under notice filed as WSR 20-21-090 on October 20, 2020.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: January 5, 2021.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 20-02-114, filed 1/2/20, effective 4/1/20)

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

- (i) Mortality tables from nationally recognized sources;
- (ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients;

(iii) A pension discount rate of 4.5 percent for state fund pensions;

(iv) A pension discount rate of ~~((5.9))~~ 5.8 percent for self-insured pensions, including the United States Department of Energy pensions; and

(v) The higher of the two pension discount rates so that pension benefits for both state fund and self-insured recipients use the same reduction factors for the calculation of death benefit options under RCW 51.32.067.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

WSR 21-02-086
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed January 6, 2021, 9:26 a.m., effective February 6, 2021]

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

Purpose: The agency amended these rules to increase the personal needs allowance from \$70.00 to \$71.12 effective January 1, 2021. Funding is approved for this increase which affects those receiving long-term services and supports in medical institutions and alternate living facilities. The agency also amended subsection (2)(a), (b), and (5) to reflect \$71.12, added references to WAC 388-478-0006 in subsections (3) and (4), and amended the publication web address in subsection (8).

Citation of Rules Affected by this Order: Amending WAC 182-513-1105.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 74.09.340.

Adopted under notice filed as WSR 20-24-035 on November 20, 2020.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: January 6, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-20-047, filed 9/26/18, effective 1/1/19)

WAC 182-513-1105 Personal needs allowance (PNA) and room and board standards in a medical institution and alternate living facility (ALF). (1) This section describes the personal needs allowance (PNA), which is an amount set aside from a client's income that is intended for personal needs, and the room and board standard.

(2) The PNA in a state veteran's nursing facility:

(a) Is ~~(\$70)~~ \$71.12, effective January 1, 2021, for a veteran without a spouse or dependent children receiving a needs-based veteran's pension in excess of \$90;

(b) Is ~~(\$70)~~ \$71.12, effective January 1, 2021, for a veteran's surviving spouse with no dependent children receiving a needs-based veteran's pension in excess of \$90; or

(c) Is \$160 for a client who does not receive a needs-based veteran's pension.

(3) The PNA in a medical institution for clients receiving aged, blind, or disabled (ABD) cash assistance or temporary assistance for needy families (TANF) cash assistance is the client's personal and incidental (CPI) cash payment, as described in WAC 388-478-0006, based on residing in a medical institution, which is \$41.62.

(4) The PNA in an alternate living facility (ALF) for clients receiving ABD cash assistance or TANF cash assistance is the CPI, as described in WAC 388-478-0006, based on residing in an ALF that is not an adult family home, which is \$38.84.

(5) The PNA for clients not described in subsections (2), (3), and (4) of this section, who reside in a medical institution or in an ALF, is ~~(\$70)~~ \$71.12, effective January 1, 2021.

(6) Effective January 1, 2018, and each year thereafter, the amount of the PNA in subsection (5) of this section may be adjusted by the percentage of the cost-of-living adjustment (COLA) for old-age, survivors, and disability social security benefits as published by the federal Social Security Administration. This adjustment is subject to state legislative funding.

(7) The room and board standard in an ALF used by home and community services (HCS) and the developmental disabilities administration (DDA) is based on the federal benefit rate (FBR) minus the current PNA as described under subsection (5)(b) of this section.

(8) The current PNA and room and board standards used in long-term services and supports are published under the institutional standards on the Washington apple health (medicaid) income and resource standards chart located at ~~((www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources))~~ www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources.

WSR 21-02-087
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed January 6, 2021, 9:36 a.m., effective February 6, 2021]

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

Purpose: The agency amended these rules to increase psychiatric per diem rates for community hospitals that serve patients in long-term inpatient psychiatric care.

Citation of Rules Affected by this Order: Amending WAC 182-550-3800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; ESSB 6168, section 215 (24)(b), chapter 357, Laws of 2020.

Adopted under notice filed as WSR 20-24-116 on December 1, 2020.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: January 6, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-12-043, filed 5/30/18, effective 7/1/18)

WAC 182-550-3800 Rebasing. The medicaid agency redesigns (rebases) the medicaid inpatient payment system as needed. The base inpatient conversion factor and per diem rates are only updated during a detailed rebasing process, or as directed by the state legislature. Inpatient payment system factors such as the ratio of costs-to-charges (RCC), weighted costs-to-charges (WCC), and administrative day rate are rebased on an annual basis. As part of the rebasing, the agency does all of the following:

(1) Gathers data. The agency uses the following data resources considered to be the most complete and available at the time:

(a) One year of fee-for-service (FFS) paid claim data from the agency's medicaid management information system (MMIS). The agency excludes:

(i) Claims related to state programs and paid at the Title XIX reduced rates from the claim data; and

(ii) Critical access hospital claims paid per WAC 182-550-2598; and

(b) The hospital's most current medicare cost report data from the health care cost report information system (HCRIS) maintained by the Centers for Medicare and Medicaid Services (CMS). If the hospital's medicare cost report from HCRIS is not available, the agency uses the medicare cost report provided by the hospital.

(c) FFS and managed care encounter data.

(2) Estimates costs. The agency uses one of two methods to estimate costs. The agency may perform an aggregate cost determination by multiplying the ratio of costs-to-charges (RCC) by the total billed charges, or the agency may use the following detailed costing method:

(a) The agency identifies routine and ancillary cost for operating capital, and direct medical education cost components using different worksheets from the hospital's medicare cost report;

(b) The agency estimates costs for each claim in the dataset as follows:

(i) Accommodation services. The agency multiplies the average hospital cost per day reported in the medicare cost report data for each type of accommodation service (e.g., adult and pediatric, intensive care unit, psychiatric, nursery) by the number of days reported at the claim line level by type of service; and

(ii) Ancillary services. The agency multiplies the RCC reported for each ancillary type of services (e.g., operating room, recovery room, radiology, laboratory, pharmacy, or

clinic) by the allowed charges reported at the claim line level by type of service; and

(c) The agency uses the following standard cost components for accommodation and ancillary services for estimating costs of claims:

(i) Routine cost components:

(A) Routine care;

(B) Intensive care;

(C) Intensive care-psychiatric;

(D) Coronary care;

(E) Nursery;

(F) Neonatal ICU;

(G) Alcohol/substance abuse;

(H) Psychiatric;

(I) Oncology; and

(J) Rehabilitation.

(ii) Ancillary cost components:

(A) Operating room;

(B) Recovery room;

(C) Delivery/labor room;

(D) Anesthesiology;

(E) Radio, diagnostic;

(F) Radio, therapeutic;

(G) Radioisotope;

(H) Laboratory;

(I) Blood administration;

(J) Intravenous therapy;

(K) Respiratory therapy;

(L) Physical therapy;

(M) Occupational therapy;

(N) Speech pathology;

(O) Electrocardiography;

(P) Electroencephalography;

(Q) Medical supplies;

(R) Drugs;

(S) Renal dialysis/home dialysis;

(T) Ancillary oncology;

(U) Cardiology;

(V) Ambulatory surgery;

(W) CT scan/MRI;

(X) Clinic;

(Y) Emergency;

(Z) Ultrasound;

(AA) NICU transportation;

(BB) GI laboratory;

(CC) Miscellaneous; and

(DD) Observation beds.

(3) Specifies resource use with relative weights. The agency uses national relative weights designed by 3M™ Corporation as part of its all-patient refined-diagnostic related group (APR-DRG) payment system. The agency periodically reviews and determines the most appropriate APR-DRG grouper version to use.

(4) Calculates base payment factors. The agency calculates the average, or base, DRG conversion factor and per diem rates. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter. The agency models the rebased system to be budget neutral on a prospective basis, including global adjustments to the budget target determined

by the agency. The agency ensures that base DRG conversion factors and per diem rates are sufficient to support economy, efficiency, and access to services for medicaid recipients. The agency will publish base rate factors on its website.

(5) To maintain budget neutrality, the agency makes global adjustments as needed.

(a) Claims paid under the DRG, rehab per diem, and detox per diem payment methods were reduced to support an estimated three million five hundred thousand dollar increase in psychiatric payments to acute hospitals.

(b) Claims for acute hospitals paid under the psychiatric per diem method were increased by a factor to inflate estimated system payments by three million five hundred thousand dollars.

(c) Effective for dates of admission on and after October 1, 2017, the agency increased psychiatric per diem rates as directed by the legislature. The increase applies to any hospital with two hundred or more psychiatric bed days.

(i) The agency prioritized the increase for hospitals not currently paid based on provider-specific costs using a similar methodology to set rates for existing inpatient facilities utilizing cost report information for hospital fiscal years ending in 2016.

(ii) The distribution of funds for each fiscal year is as follows:

(A) Free-standing psychiatric hospitals receive 68.15 percent of the statewide average cost per day.

(B) All other hospitals receive the greater of 78.41 percent of their provider-specific cost, or their current medicaid psychiatric per diem rate.

(iii) The agency set the increased rates to assure that the distribution of funds does not exceed the amounts provided by the legislature.

(iv) The agency conducts annual reviews for updated cost information to determine whether new and existing providers meet the two hundred or more bed criteria.

(v) The agency will apply the same cost percentage criteria for future rebasing of the psychiatric per diem rates.

(6) Effective July 1, 2020, through June 30, 2021, the agency sets psychiatric per diem rates specific to long-term civil commitments separately from other psychiatric per diem rates.

(a) In order to qualify for a provider-specific long-term civil commitment psychiatric per diem, the provider must be contracted with the agency to provide long-term civil commitment beds.

(b) The agency sets the provider-specific rate at the time of contracting.

(c) The agency sets the rate as follows:

(i) For a hospital that has a medicare cost report on file with the agency for the most recent filing year, the rate is set using hospital specific costs or nine hundred forty dollars, whichever is greater.

(ii) For a hospital that does not have a medicare cost report on file with the agency, the rate is set using the average of all in-state long-term psychiatric per diem rates based on provider type or the hospital's current short-term psychiatric per diem rates, whichever is greater.

(d) The agency sets the rates so as to not exceed the amounts appropriated by the legislature.

(7) Determines provider specific adjustments. The following adjustments are applied to the base factor or rate established in subsection (4) of this section:

(a) Wage index adjustments reflect labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(i) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(ii) The amount in (a)(i) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then

(iii) The agency adds the nonlabor portion of the base rate to the amount in (a)(ii) of this subsection to produce a hospital-specific wage adjusted factor.

(b) Indirect medical education factors are applied to the hospital-specific base factor or rate. The agency uses the indirect medical education factor established by medicare on the most currently available medicare cost report that exists at the time the rates are set; and

(c) Direct medical education amounts are applied to the hospital-specific base factor or rate. The agency determines a percentage of direct medical education costs to overall costs using the most currently available medicare cost report that exists at the time the rates are set.

~~((7))~~ (8) The final, hospital-specific rate is calculated using the base rate established in subsection (4) of this section along with any applicable adjustments in subsections ~~((5))~~ (6) and ~~((6))~~ (7) of this section.

WSR 21-02-091

PERMANENT RULES DEPARTMENT OF ECOLOGY

[Order 19-08—Filed January 6, 2021, 10:36 a.m., effective February 6, 2021]

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

Purpose: The rule implements parts of the Washington Clean Energy Transformation Act (CETA), chapter 19.405 RCW, which the Washington legislature passed and the governor signed into law in 2019. The rule:

- Establishes a process for determining what types of energy transformation projects (ETPs) may be eligible for compliance with CETA.
- Establishes a process and requirements for developing the standards, methodologies, and procedures for evaluating ETPs.
- Provides methods for calculating greenhouse gas (GHG) emissions content in electricity.

Citation of Rules Affected by this Order: New WAC 173-444-010, 173-444-020, 173-444-030, 173-444-040, 173-444-050, 173-444-060, 173-444-070, 173-444-080, and 173-444-090.

Statutory Authority for Adoption: Chapter 19.405 RCW, CETA; RCW 19.405.020(18), 19.405.040, and 19.405.100.

Other Authority: RCW 70A.45.010.

Adopted under notice filed as WSR 20-18-096 on September 2, 2020.

Changes Other than Editing from Proposed to Adopted Version: WAC 173-444-040 Greenhouse gas content calculation.

Subsection (3): We corrected the reference in subsection (3)(f)(ii)(A) to refer to the subsection establishing the Energy Information Administration (EIA) calculation method.

(A) EIA has published electric power data for the power plant or aggregate source consistent with ~~subsection(2)(b)~~ and (c) of this subsection; or

Subsection (5): We revised the rule text in subsection (5)(b)(ii)(A) to clarify "plant net output"; includes utility claims measured at the busbar.

(A) Utility claims are reported on a plant net output basis, like utility claims measured at the busbar; or

WAC 173-444-060 Eligible categories of energy transformation projects.

Subsection (6): We corrected the reference in subsection (6) to refer to the subsection establishing the conditions that a project must meet to be eligible as [an] energy transformation project.

(6) In addition to the conditions in subsection (4~~5~~) of this section in order for a project category to be included in this list, potential projects that may fall under that category must not:

Subsection (11): We corrected the reference in subsection (11) to refer to the subsections establishing the positive and negative conditions that a project must meet to be eligible as [an] energy transformation project.

(a) Evaluate whether the requested additional or modified categories meet the conditions established in subsections (4~~5~~) and (5~~6~~) of this section.

A final cost-benefit analysis is available by contacting Debebe Dererie, Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, phone desk 360-407-7558 or mobile 360-688-8103, for Washington relay service or TTY call 711 or 877-833-6341, email debebe.dererie@ecy.wa.gov, website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rule-making/WAC-173-444>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 9, Amended 0, Repealed 0.

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

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

Date Adopted: January 6, 2020 [2021].

Laura Watson
Director

Chapter 173-444 WAC

CLEAN ENERGY TRANSFORMATION RULE

NEW SECTION

WAC 173-444-010 Purpose and scope. The purpose of this chapter is to establish rules that electric utilities shall use to comply with parts of the Washington Clean Energy Transformation Act (CETA), chapter 19.405 RCW.

(1) The purpose of the provisions in Part I of this chapter is to establish methods for calculation of the greenhouse gas emissions content in electricity an electric utility supplies to its retail electric customers in Washington state. The calculation methods in Part I of this chapter are developed under the requirements of RCW 19.405.070 and 19.405.020(22).

(2) Part II of this chapter implements the requirements under RCW 19.405.020(18), 19.405.040, and 19.405.100(7). The purpose of the provisions in Part II of this chapter is to establish:

(a) The processes for identifying project categories that are eligible for compliance with CETA as energy transformation projects.

(b) The process and requirements for developing the standards, methodologies, and procedures for evaluating energy transformation projects.

NEW SECTION

WAC 173-444-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. If this section provides no definition, the definition found in chapter 173-441 WAC applies.

(1) **"Additionality"** means a condition where a project would not or did not come into being but for the investment action taken by the electric utility (or utilities) for the purposes of complying with chapter 19.405 RCW, in accordance with RCW 19.405.040 (2)(e) and (f) and this section.

(2) **"Aggregate source"** means:

(a) Electric power originating from the same source type from one or more power plants that cannot be traced back to a specific power plant with data published in Form EIA-923; or

(b) Electric power obtained from a single asset-controlling supplier, as designated by the California Air Resources Board, with an emissions rate approved by the regulatory agency. This can include multiple source types.

(3) **"Approving body"** means the governmental agency, board, commission, or other entity that is granted the authority to ensure compliance with RCW 19.405.060 or 19.405.090 and therefore provide approval to a project intended to serve as an energy transformation project.

(4) **"Baseline"** means a reference case, projection, or estimation of project performance against which actual project performance can be measured. The baseline condition for a project is a reasonable representation of conditions that would likely have occurred during the energy transformation project implementation period if the project had not been implemented.

(5) **"Biogenic CO₂"** is defined in 40 C.F.R. Part 98 as adopted in chapter 173-441 WAC.

(6) **"Biomass energy":**

(a) Includes:

(i) Organic by-products of pulping and the wood manufacturing process;

(ii) Animal manure;

(iii) Solid organic fuels from wood;

(iv) Forest or field residues;

(v) Untreated wooden demolition or construction debris;

(vi) Food waste and food processing residuals;

(vii) Liquors derived from algae;

(viii) Dedicated energy crops; and

(ix) Yard waste.

(b) Does not include:

(i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;

(ii) Wood from old growth forests; or

(iii) Municipal solid waste.

(7) **"Carbon dioxide equivalent" or "CO₂e"** means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential as established in Table A-1 in WAC 173-441-040.(8) **"Commission"** means the Washington utilities and transportation commission.(9) **"Energy Information Administration" or "EIA"** means the U.S. Department of Energy's Energy Information Administration.(10) **"Energy transformation project"** has the same meaning as RCW 19.405.020(18).(11) **"Environmental Protection Agency" or "EPA"** means the U.S. Environmental Protection Agency.(12) **"Form EIA-923"** means the survey data published by the U.S. Energy Information Administration that describes detailed electric power data, monthly and annually, on electricity generation, fuel consumption, fossil fuel stocks, and receipts at the power plant and prime mover level. *Generation and Fuel Data*, page 1, is typically used for compliance with this chapter.(13) **"Fossil fuel"** means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such a material.(14) **"Greenhouse gas," "greenhouse gases," "GHG," and "GHGs"** includes carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆). "Greenhouse gas" also includes any other gas or gases designated by ecology by rule in Table A-1 in WAC 173-441-040.(15) **"Megawatt-hour" or "MWh"** means one thousand kilowatt-hours or one million watt-hours.(16) **"Nonemitting electric generation"** means:

(a) Electricity from a generating facility or a resource that provides electric energy, capacity, or ancillary services to an electric utility and that does not emit greenhouse gases as a by-product of energy generation; and

(b) Does not include renewable resources.

(17) **"Permanent"** means an emission reduction that can be assured and demonstrated by application of basic scientific principles to:

(a) Be nonreversible; or

(b) Exist for a period of not less than one hundred years except in the case of any project subject to WAC 463-85-200 and related requirements; or

(c) Exist for the time period incorporated into the definition for permanent sequestration in case of any projects subject to WAC 463-85-200 and related requirements.

(18) **"Project"** means a scheme or plan for utilizing goods or services to accomplish a goal, including by implementing a program or by facilitating the placement or utilization of machinery or infrastructure.(19) **"Protocol"** means a compendium of principles, procedures, criteria, processes, methodologies, rules, or other requirements that ensure uniform or consistent application of those elements across electric utilities in the implementation of energy transformation projects.(20) **"Regulatory agency"** means the Washington utilities and transportation commission for investor-owned utilities or the department of commerce for consumer-owned utilities.(21) **"Renewable hydrogen"** means hydrogen produced using renewable resources both as the source for the hydrogen and the source for the energy input into the production process.(22) **"Renewable natural gas"** means a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.(23) **"Renewable resource"** means:

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy;

(e) Renewable natural gas;

(f) Renewable hydrogen;

(g) Wave, ocean, or tidal power;

(h) Biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or

(i) Biomass energy.

(24) **"Source type" or "fuel type"** means the technology or fuel used to generate electricity. This typically follows the classification of fuel type codes from Form EIA-923.(25) **"Unspecified electricity"** means an electricity source for which the fuel attribute is unknown or has been separated from the energy delivered to retail electric customers.NEW SECTION**WAC 173-444-030 Applicability.** The provisions of this chapter apply to:

(1) Consumer-owned utilities as defined in RCW 19.405.020(10).

(2) Investor-owned utilities as defined in RCW 19.405.-020(24).

**PART I - CALCULATION OF GREENHOUSE GAS
EMISSIONS CONTENT IN ELECTRICITY**

NEW SECTION

WAC 173-444-040 Greenhouse gas content calculation. Use the following methods to calculate the greenhouse gas emissions content in electricity.

(1) Utility emissions.

(a) Total annual utility greenhouse gas emissions are calculated using Equation 1 of this subsection.

Equation 1

$$\text{Utility Emissions} = \text{EPA} + \text{EIA} + \text{unspecified}$$

Where:

- Utility emissions = Total of all GHG emissions for the facility for the calendar year, metric tons CO₂e/year.
- EPA = Total of all GHG emissions calculated using the EPA methodology in subsection (2) of this section, metric tons CO₂e/year.
- EIA = Total of all GHG emissions calculated using the EIA methodology in subsection (3) of this section, metric tons CO₂e/year.
- Unspecified = Total of all GHG emissions calculated using the unspecified electricity methodology in subsection (4) of this section, metric tons CO₂e/year.

(b) Do not include nonemitting electric generation and renewable resources when calculating utility emissions using Equation 1 of this subsection.

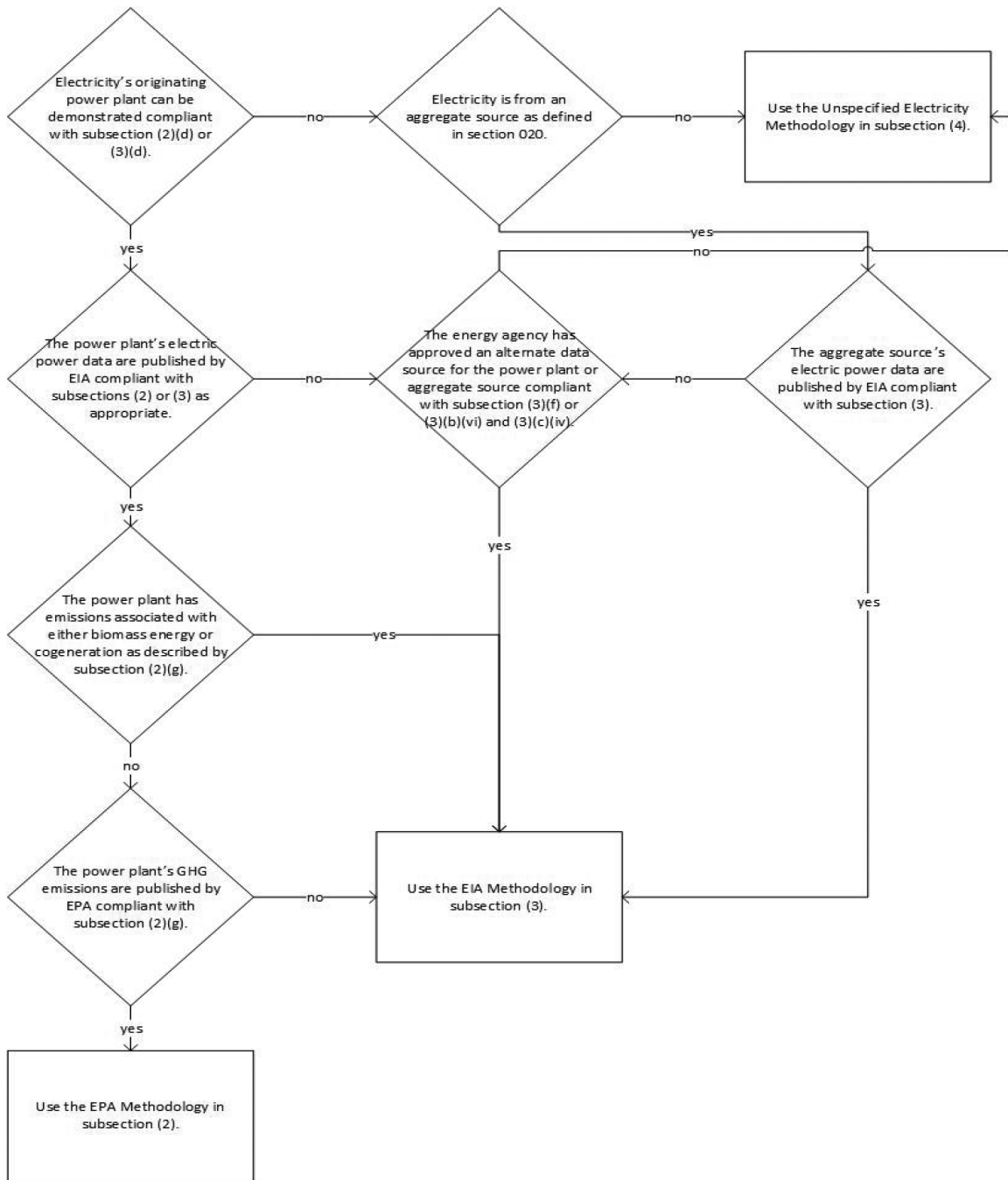
(c) Methodology selection:

(i) Use the conditions in subsections (2)(g), (3)(f), and (4) of this section to determine the appropriate method for a given quantity of electricity. Figure 1 of this subsection provides a simplified representation of the method selection process, but subsections (2)(g), (3)(f), and (4) of this section take precedence.

(ii) The methodologies in subsections (2) through (4) of this section are ordered from most to least preferred, with subsection (2) of this section being the most preferred.

(iii) The regulatory agency may instruct a utility to use a specific method from this section on a case-by-case basis if the regulatory agency determines another method is not appropriate in that case.

Figure 1: Simplified representation of the method selection process



(2) **EPA methodology.** This methodology calculates greenhouse gas emissions content in electricity using public data from the Environmental Protection Agency's (EPA) Greenhouse Gas Reporting Program established under 40 C.F.R. Part 98 as adopted by WAC 173-441-120 and public data from the Energy Information Administration's (EIA) Form EIA-923 program.

(a) GHG emissions from each power plant are calculated individually then summed to create a utility specific total for this method using Equation 2 of this subsection.

Equation 2

$$EPA = \sum_{i=1}^n \frac{EPA \text{ plant GHG emissions} \times \text{cogeneration correction factor}}{\text{plant net electric generation}} \times (\text{utility claims} + \text{transmission losses})$$

Where:

- EPA = Total of all GHG emissions calculated using the EPA methodology, metric tons CO₂e/year.
- EPA plant GHG emissions = sum of all GHG emissions from the individual power plant as calculated by subsection (2)(b) of this section, metric tons CO₂e/year.
- Cogeneration correction factor = ratio of electric energy to total energy for the individual power plant as calculated by subsection (2)(f) of this section, unitless.
- Plant net electric generation = sum of all net generation from the individual power plant as calculated by subsection (2)(c) of this section, MWh/year.
- Utility claims = sum of all utility claims for the individual power plant as calculated by subsection (2)(d) of this section, MWh/year.
- Transmission losses = estimate of transmission losses between the individual power plant and utility customers as calculated by subsection (2)(e) of this section, MWh/year.
- n = number of power plants with utility claims using this method in the given calendar year.

(b) EPA plant GHG emissions. GHG emissions for this method are defined as the sum of all Subpart C and Subpart D emissions from the individual power plant as published by EPA based on 40 C.F.R. Part 98 reporting consistent with the methods adopted in WAC 173-441-120. Emissions are on a calendar year basis and in units of metric tons CO₂e. Use emissions values specific to the calendar year in the calculation. If EPA has not yet published emissions values for the calendar year in the calculation, use the most recent five year rolling average published emissions values. The total must include all reported GHGs, including biogenic CO₂, listed in Table A-1 of WAC 173-441-040 converted into CO₂e as specified in that section.

(c) Plant net electric generation. Sum of all annual net generation (megawatt-hours) from Form EIA-923 for the power plant for the calendar year for all reported fuel type codes.

(d) Utility claims. Claims of the reporting utility for the power plant measured at the busbar for the calendar year as established by:

- (i) Information submitted to the department of commerce under RCW 19.29A.140 and rules implementing that section; or
- (ii) Information reported to the utilities and transportation commission under WAC 480-109-300 or its successor, should that provision be amended or recodified.

(e) Transmission losses. Calculate transmission losses using subsection (5) of this section.

(f) Cogeneration correction factor. Account for nonelectric heat use at the power plant by dividing the sum of all annual Elec Fuel Consumption MMBtu by the sum of all annual Total Fuel Consumption MMBtu from Form EIA-923.

(g) Use this methodology only when all of the following conditions are met for the individual power plant and calendar year:

- (i) The utility can demonstrate the originating power plant for the electricity with a claim that meets the standards of subsection (2)(d) of this section.
- (ii) EPA has published GHG emissions totals for the power plant consistent with subsection (2)(b) of this section. The published report must not be flagged by EPA as having not met EPA's verification requirements.
- (iii) Published EPA GHG emissions for the power plant must not include any biomass energy.
- (iv) EIA has published electric power data for the power plant consistent with subsections (2)(c) and (f) of this section.
- (v) The power plant is not classified as a combined heat and power plant in that year's Form EIA-923 report.
- (vi) The cogeneration correction factor calculated in subsection (2)(f) of this section must be 0.9 or greater.

(3) **EIA methodology.** This methodology calculates greenhouse gas emissions content in electricity using public data from the EIA's Form EIA-923 program or an approved alternate data source.

(a) GHG emissions from each power plant or aggregate source are calculated individually then summed to create a utility specific total for this method using Equation 3 of this subsection.

Equation 3

$$EIA = \sum_{i=1}^n \frac{\text{EIA GHG emissions}}{\text{net electric generation}} \times (\text{utility claims} + \text{transmission losses})$$

Where:

- EIA = Total of all GHG emissions calculated using the EIA methodology, metric tons CO₂e/year.
- EIA GHG emissions = sum of all GHG emissions from the individual power plant or aggregate source as calculated by subsection (3)(b) of this section, metric tons CO₂e/year.

- Net electric generation = sum of all net generation from the individual power plant or aggregate source as calculated by subsection (3)(c) of this section, MWh/year.
- Utility claims = sum of all utility claims for the individual power plant or aggregate source as calculated by subsection (3)(d) of this section, MWh/year.

- Transmission losses = estimate of transmission losses between the individual power plant or aggregate source and utility customers as calculated by subsection (3)(e) of this section, MWh/year.
- n = number of power plants and aggregate sources with utility claims using this method in the given calendar year.
 - (b) EIA GHG emissions. GHG emissions for this method are defined as the sum of all GHG emissions from the individual power plant or aggregate source based on fuel quantities published by EIA or from an approved alternate source. Emissions are on a calendar year basis and in units of metric tons CO₂e.
 - (i) GHG emissions are calculated separately for either:
 - (A) Whenever possible: Each power plant, calendar year, and reported fuel type; or
 - (B) When power plant information is not available: Each aggregate source, calendar year, and source type.
 - (ii) GHG emissions for nonemitting electric generation and renewable resources must be calculated, but kept separate from other types of GHG emissions.
 - (iii) GHG emissions, including CO₂, CH₄, and N₂O, from combustion are calculated using the Tier 1 Calculation Methodology in Subpart C of 40 C.F.R. Part 98 as adopted by WAC 173-441-120.
 - (A) For fuel quantity use one of the following:
 - (I) For plant level emissions use annual electric fuel consumption quantity; or
 - (II) For aggregate source level emissions use the total fuel consumption quantity for the aggregate source.
 - (III) The regulatory agency may approve an alternate fuel quantity data source for the plant or aggregate source.
 - (B) Use WAC 174-441-080 to convert units as needed.
 - (C) The high heat value, CO₂ emissions factor, CH₄ emissions factor, and N₂O emissions factor for the following source types are assumed to be zero:
 - (I) Geothermal;
 - (II) Nuclear;
 - (III) Solar;
 - (IV) Water;
 - (V) Wind.
 - (D) Calculate emissions for carbon dioxide, methane, and nitrous oxide. Calculate total GHG emissions for each fuel type using Equation A-1 of WAC 173-441-030.
 - (iv) Fugitive CO₂ emissions from steam geothermal sources must be calculated by multiplying plant net electric generation from steam geothermal sources as described in subsection (3)(c) of this section by 0.04028 metric tons/MWh. Add this value to the combustion emissions calculated in subsection (3)(b)(iii) of this section.
 - (v) Sum total GHG emissions for all fuel types to get the total power plant or aggregate source GHG emissions for the year, including nonemitting electric generation and renewable resources. Provide a second total that excludes nonemitting electric generation and renewable resources.
 - (vi) GHG emissions from an asset-controlling supplier aggregate source may be a single value, including multiple source types, specific to that asset-controlling supplier pro-

vided that the value was originally calculated in accordance with this chapter and approved by the regulatory agency.

(c) Net electric generation. Calculate the net electric generation, using one of the following:

(i) For plant net electric generation sum all net generation (megawatt-hours) for the power plant for the calendar year for all reported fuel type codes;

(ii) For aggregate source net electric generation sum all net generation (megawatt-hours) for the aggregate source for the calendar year;

(iii) The regulatory agency may approve an alternate net electric generation data source for the plant or aggregate source; or

(iv) Net electric generation from an asset-controlling supplier aggregate source may be a single value, including multiple source types, specific to that asset-controlling supplier provided that the value was originally calculated in accordance with this chapter and approved by the regulatory agency.

(d) Utility claims. Claims of the reporting utility for the power plant or aggregate source measured at the busbar for the calendar year as established by:

(i) Information submitted to the department of commerce under RCW 19.29A.140 and rules implementing that section; or

(ii) Information reported to the utilities and transportation commission under WAC 480-109-300 or its successor, should that provision be amended or recodified.

(e) Transmission losses. Calculate transmission losses using subsection (5) of this section.

(f) Use this methodology only when the following conditions are met for the individual power plant or aggregate source and calendar year:

(i) The utility can demonstrate the originating power plant or aggregate source for the electricity with a claim that meets the standards of subsection (3)(d) of this section.

(ii) One of the following conditions is met:

(A) EIA has published electric power data for the power plant or aggregate source consistent with (b) and (c) of this subsection; or

(B) The regulatory agency has approved an alternate data source for the plant or aggregate source.

(4) **Unspecified electricity.** Use Equation 4 of this subsection when calculating greenhouse gas emissions content in electricity for unspecified electricity.

Equation 4

$$\text{unspecified} = \text{UE} \times \text{UCO}_{2e}$$

Where:

- Unspecified = Total of all GHG emissions calculated using the unspecified electricity methodology, metric tons CO₂e/year.
- UE = Total electricity subject to this method, MWh/calendar year.
- UCO₂e = 0.437 metric tons CO₂e/MWh of electricity.

(5) **Transmission losses.** Calculate transmission losses using the following method as directed by the regulatory agency.

(a) Calculate transmission losses at the following levels from most to least preferred depending on data availability:

- (i) Specific to the individual power plant;
- (ii) Specific to the aggregate source;
- (iii) Generalized for the utility.

(b) Use one of the following to calculate transmission losses:

(i) If utility claims are reported on a sales basis, then multiply total sales in MWh by 1-(retail sales MWh/total claims MWh).

(ii) Transmission losses in this equation are zero MWh if:

(A) Utility claims are reported on a plant net output basis, like utility claims measured at the busbar; or

(B) The emissions rate already includes transmission losses; or

(C) The emissions rate is from an asset-controlling supplier where that emissions rate was approved by the regulatory agency.

(iii) If unable to calculate transmission losses using subsection (5)(b)(i) or (ii) of this section, then multiply utility claims in MWh by:

- (A) 5%; or
- (B) A value specified by the regulatory agency.

PART II - ENERGY TRANSFORMATION PROJECTS

NEW SECTION

WAC 173-444-050 Requirements for energy transformation projects. (1) Electric utilities that invest in energy transformation projects as a means to assist in meeting the greenhouse gas neutral standard in RCW 19.405.040 must fulfill the requirements of this chapter.

(2) A project intended to serve as an energy transformation project must conform to a project category included in the list of eligible categories of energy transformation projects established through the process in WAC 173-444-060.

(3) Electric utilities that invest in energy transformation projects must use the criteria established through the requirements and processes in WAC 173-444-070.

(4) Electric utilities that invest in energy transformation projects must use the verification methods, reporting standards, and other procedures established in WAC 173-444-080.

(5) The commission, the governing boards of consumer-owned utilities, or the department of commerce may have rules or requirements related to energy transformation projects in addition to the requirements of this chapter. Fulfilling the requirements of this chapter is a necessary, but not final, step toward receiving approval for a candidate project intended as an energy transformation project under chapter 19.405 RCW. Fulfilling the requirements of this chapter does not provide a basis for guaranteeing a positive decision by an approving body for a candidate project intended as an energy transformation project.

(6) Approval or rejection of a particular energy transformation project occurs through the governing boards of consumer-owned utilities, the commission, or other applicable approving bodies with the necessary jurisdiction over the financial decisions of the electric utility or utilities proposing the candidate energy transformation project.

NEW SECTION

WAC 173-444-060 Eligible categories of energy transformation projects. (1) Ecology will identify eligible categories of energy transformation projects. A list of these eligible categories of energy transformation projects will be established, expanded, and maintained through the processes in this section.

(2) This list will identify categories of projects that have been subject to a preliminary but not definitive evaluation and screening relative to the conditions, requirements, and criteria established in RCW 19.405.040 and 19.405.020(18) for energy transformation projects.

(3) Inclusion on this list of a project category does not grant or imply preapproval or preauthorization for any particular project that may conform to a listed category relevant to that project.

(4) Inclusion of a category on this list does not indicate a final determination as to whether a particular project has or will meet the criteria established in WAC 173-444-070.

(5) In order for a project category to be included in this list, hypothetical projects that may fall under that category must have the potential of meeting all of the following conditions:

- (a) Providing energy-related goods or services;
- (b) Reducing fossil fuel consumption and GHG emissions attributable to that consumption;
- (c) Providing benefits to the customers of an electric utility or electric utilities in a manner that can satisfy the equity considerations required for this chapter;
- (d) Associated with the consumption of energy in Washington;
- (e) Being enforceable by the state of Washington;
- (f) Providing quantifiable benefits in units of energy or units of GHG emissions;
- (g) Resulting in permanent reductions of greenhouse gas emissions; and
- (h) Satisfying the additionality tests required by RCW 19.405.040 (2)(e) and (f).

(6) In addition to the conditions in subsection (5) of this section in order for a project category to be included in this list, potential projects that may fall under that category must not:

- (a) Be intended to generate electricity for delivery, sale, or other provision of electricity to retail customers as a good or service as the primary purpose of the project. Indirect provision of stored electricity to retail customers as a secondary benefit (e.g., certain grid-connected vehicle energy storage technologies) is not in and of itself a disqualifying factor. Generation of electricity for another energy-related purpose (e.g., vehicle propulsion) is not disqualifying;
- (b) Have the capacity to create a new use of fossil fuels resulting in a net increase of fossil fuel usage;

(c) Have the capacity to be credited as a resource that could meet the standard established in RCW 19.405.040 (1)(a) in addition to use as an alternative compliance mechanism consistent with this chapter.

(7) Ecology will begin preparation of an initial list of eligible program categories within thirty days after the effective date of this chapter.

(a) Ecology will include in its evaluation of project categories that should be considered eligible all of the project type descriptions and groupings listed for consideration in RCW 19.405.020 (18)(b).

(b) Ecology will provide a thirty day public comment period for interested parties to submit to ecology project categories, concepts, or groupings not described in RCW 19.405.020 (18)(b), and any justification or background materials for the submission, which they wish to have subject to the evaluation process for adding to this list.

(c) In the preparation of the initial list ecology will take into account comments received in the rule-making process for this section, including recommendations for the evaluation of project categories, concepts, or groupings not described in RCW 19.405.020 (18)(b) and comments regarding the appropriateness of including those described in RCW 19.405.020 (18)(b).

(d) At a minimum, ecology will include project categories in the initial list that have the potential to facilitate electrification of the transportation sector, including at least one project category pertaining to the establishment of electric vehicle charging infrastructure and at least one category pertaining to either the use or supply of renewable hydrogen.

(8) After completing its evaluation, ecology will post on its website a draft list of eligible categories of energy transformation projects along with an evaluation report summarizing its analysis process for public comment. Ecology will send out notice to invite the public comment on the draft list. The public comment period for this stage will be not less than sixty days.

(9) Not less than ninety days after the close of the comment period ecology will post on its website a revised initial list of eligible categories of energy transformation projects. This will be the initial list of eligible project categories.

(10) Ecology can modify or add to this initial list of project categories after posting it on its website. Additions or modifications to this list must:

(a) Be capable of meeting the conditions established in subsections (5) and (6) of this section; and

(b) Go through a public review and comment process for at least forty-five days.

(11) Ecology will allow interested parties to submit requests for consideration of additional or modified categories of projects after posting this initial list, through a method approved by ecology. Prior to making a decision on the request, ecology will:

(a) Evaluate whether the requested additional or modified categories meet the conditions established in subsections (5) and (6) of this section; and

(b) Send notice and post on its website for public comment any proposed additions or modifications to the list of project categories for a period of not less than forty-five days before any final determination.

NEW SECTION

WAC 173-444-070 Criteria for energy transformation projects. (1) Criteria for use by electric utilities and the manner in which to use them for projects intended to serve as energy transformation projects will exist in a comprehensive protocol authored and maintained by ecology, as well as in supporting documents derived from a variety of sources.

(2) The goal of the comprehensive protocol is to ensure that the criteria, standards, elements, and requirements established in RCW 19.405.020(18), 19.405.040, and 19.405.100 (7) are clearly defined, relevant to, and actionable for projects that conform to eligible categories of energy transformation projects. The comprehensive protocol will be applicable to project proponents, electric utilities, verification entities, oversight authorities, and interested parties.

(3) At a minimum the comprehensive protocol will include context, instructions, quantitative factors, methodologies, procedures, data, and external references to address the following:

(a) Applicability (pursuant to RCW 19.405.020 (18)(a)): Description of the range of projects to which the protocol applies in a manner consistent with the list of eligible categories of energy transformation projects developed and maintained through WAC 173-444-060.

(b) Assessment parameters (pursuant to RCW 19.405.-020 (18)(a) and 19-405-040(3)):

(i) Identification of the primary effects of the project, including fossil fuel reductions and energy impacts; which will be necessary for analysis and included in the project plan; and

(ii) Key secondary effects, such as benefits to utility customers, and the geographic regions in which these effects occur which are, at a minimum, important inputs into other elements of the project plan.

(c) Temporal scope (pursuant to RCW 19.405.040 (2)(a), (b), and (d)):

(i) Identification of the time scale over which the project is expected to persist; and

(ii) The capability of the project to provide the projected or expected level of benefits over time, in addition to any procedures for ensuring those benefits over time.

(d) Quantification methods (pursuant to RCW 19.405.-040 (2)(a), (b), and (4)):

(i) Methodologies to be employed to measure or estimate energy benefits, emission reductions and other effects from the project categories address in the comprehensive protocol, potentially varying from project category to project category; and

(ii) Proration methods, as applicable to a particular project category, to distinguish and separate electricity use from fossil fuel effects; and

(iii) Conversion factors for greenhouse gas emissions from projects, to be used as directed in the relevant methodologies to ensure the project benefits can be expressed in units of energy for compliance purposes if the use of direct energy benefits are not appropriate.

(e) Baseline procedures (pursuant to RCW 19.405.040 (2)(a), (b), and (4)): Conditions and procedures by which to establish a baseline or benchmark against which to measure project performance over time.

(f) Equity effects (pursuant to RCW 19.405.020 (18)(a) and 19.405.040(8)):

(i) Narrative or analysis sufficient to contribute to the overall demonstration, consistent with the requirements of an approving body or regulatory agency to implement RCW 19.405.040(8), that the benefits to utility customers identified in (b) of this subsection are occurring through:

(A) An equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities; and

(B) Long-term and short-term public health and environmental benefits and reduction of costs and risks; and

(C) Energy security and resiliency.

(ii) Any other information to ensure that the project plan provides the necessary information and inputs for any determinations, processes, or other steps required by the approving bodies or regulatory agencies for their assessment of the equity requirements in chapter 19.405 RCW.

(g) Fossil fuel effects (pursuant to RCW 19.405.040(3)): Analysis sufficient to demonstrate that the project does not create a new use of fossil fuels resulting in a net increase of fossil fuel usage.

(h) Additionality tests (pursuant to RCW 19.405.040 (2) (e) and (f)):

(i) Procedures or demonstrations that the project is not required by another statute, rule, or other legal requirement; and

(ii) Not reasonably assumed to occur absent the investment in the project, or, if an investment has already been made, not reasonably assumed to occur absent additional funding in the near future.

(i) Monitoring and reporting procedures (pursuant to RCW 19.405.100(7)): A description of the planned approaches or procedures that ensure that project outcomes are measurable, and reported over time through regulatory requirements or voluntary action, including any such procedures that an approving body may put in place.

(j) Verification procedures (pursuant to RCW 19.405.-040 (2)(d) and 19.405.100(7)):

(i) Demonstration or attestation of commitment to third-party verification of the project, for the period of time for which the benefits of the project are proposed to be applied toward the requirements of chapter 19.405 RCW, in a manner consistent with the requirements of WAC 173-444-080; and

(ii) Meeting or ensuring compliance with any additional project verification requirements for the project category which may intersect with any of the criteria identified in this section, such as fuel inspections or infrastructure inspections.

(k) Enforcement regimes (pursuant to RCW 19.405.040 (2)(c)): Identification of relevant regulatory or compliance authorities that have jurisdiction over aspects of the project to establish which jurisdiction or jurisdictions have the authority to enforce, and whether the project is enforceable by the state of Washington.

(4) The comprehensive protocol may adopt or adapt other protocols, methodologies, guidance, or similar documents in whole or in part from other project-based programs or policy bodies, and apply those elements to some or all of the included elements of the comprehensive protocol.

(5) Additional information or analysis may be required for a given program category or categories by the comprehensive protocol.

(6) Ecology will post the initial comprehensive protocol for public comment for a period of not less than sixty days before finalizing the initial version of the protocol.

(7) Ecology will modify or expand the comprehensive protocol to reflect new information, improve the applicability of the embodied information to existing projects, and to ensure the ability of the comprehensive protocol to incorporate and account for new projects.

(a) Ecology will establish a web-based mechanism, as well as alternative comment pathways, for soliciting comment on the comprehensive protocol to ensure timely updates are possible.

(b) Ecology will evaluate the comprehensive protocol every six months and update it as necessary.

(8) Ecology will post any such modifications to the existing comprehensive protocol for public comment for a period of not less than thirty days before making any changes to the protocol.

(9) The publication process for the comprehensive protocol will use a versioning system, so that the version of the protocol in place at the time that it is used for the purposes outlined in this chapter will be easily discernible and memorialized for use in other processes.

(10) Ecology will post the most recent version of the comprehensive protocol and supporting documents on the agency website and will make them available in alternative forms upon request.

NEW SECTION

WAC 173-444-080 Procedures for energy transformation projects. (1) Electric utilities must follow the processes and procedures in this section in order for energy transformation projects to be eligible for use.

(2) To facilitate the processes in this section an electric utility must prepare a project plan describing the project intended to qualify as an energy transformation project, how the project should work, and how the project conforms to the criteria and requirements in the comprehensive protocol.

(3) Electric utilities must submit the project plan to the validating or verifying entities and to approving bodies consistent with the applicable requirements of the comprehensive protocol.

(4) The comprehensive protocol that ecology develops will provide the required criteria and address the manner in which electric utilities or their designated representatives should apply the criteria to prepare and submit the project plan.

(5) The comprehensive protocol will include reporting, formatting, and organizational requirements for the creation of the project plan to promote consistency in explanation and ease of interpretation for use in the project approval process for energy transformation projects.

(6) The approving body may require additional information or plan elements to be included in this project plan beyond those that are required by the comprehensive protocol.

(7) The project plan must be validated to verify that the proposed project conforms to the comprehensive protocol and any supporting documents referenced in that protocol. This verification step validates whether the project, as proposed in the project plan, meets the following conditions:

(a) The project plan is complete in that every issue required to be addressed by the comprehensive protocol has a sufficient response in the project plan.

(b) The narrative responses in the project plan provides a sufficient justification or evidentiary basis that, as proposed, the project is capable of meeting the requirements of the protocol and any supporting documents referenced in the protocol.

(8) The validation step in subsection (7) of this section can be accomplished in one of the following two ways, unless the approving body mandates the use of only one approach:

(a) Through third-party verifier or verifying team according to subsection (9) of this section; or

(b) Through a voluntary request by the electric utility to ecology according to subsection (10) of this section.

(9) If a third party is used for the validation process in subsection (7) of this section, that entity must meet the following requirements:

(a) The third-party verifier, or the firm employing the verifier or verifying team, must be accredited or approved by at least one of the following:

(i) The American National Standards Institute National Accreditation Board accreditation program for Greenhouse Gas Validation/Verification Bodies.

(ii) The California Air Resources Board under California's Regulation for the Mandatory Reporting of GHG emissions.

(iii) Through another accreditation program by prior approval of ecology if it is deemed by ecology that the accreditation program is of equal stringency to (a)(i) or (ii) of this subsection.

(b) The firm employing the verifier or verifying team, or an independent verifier if there is no team or firm involved, must be able to demonstrate that there is no conflict of interest in their evaluation. All verifiers must sign the conflict of interest declaration through a form and process designated by ecology.

(c) The processes and procedures for using a third-party verification service will be established by ecology through a guidance document. After completion by ecology this guidance document will be posted for public comment for a minimum of thirty days.

(10) The validation step in subsection (7) of this section can also be accomplished through a voluntary request by the electric utility to ecology for a validation opinion for the project. This validation opinion will be conducted as follows:

(a) Ecology will first conduct a completeness evaluation to ensure that all aspects of the project plan and supporting application are included, and that the documentation provides a level of detail and clarity sufficient for further evaluation.

(b) If ecology determines the project plan is insufficient or incomplete, ecology will notify the applicant. A period of time for remedying the problem will be provided by ecology. Extensions for good cause may be approved by ecology at its discretion.

(c) If the applicant is able to address all issues with the project plan or supporting materials within the time period provided by ecology, the evaluation process will continue to the next phase. If the applicant is unable to remedy the identified issues, the evaluation process may be put on hold by ecology.

(d) Once ecology judges that the project plan for a project is complete, ecology will post the relevant documents for public comment for a period of forty-five days.

(e) Ecology will conduct a review of the project plan to validate the project plan in relation to the requirements of the comprehensive protocol. Ecology will, to the best of its abilities, follow comparable procedures and analytical methods as those used by verifiers and verifying firms that have been certified through the processes identified in subsection (9)(a) of this section.

(f) Upon completion of its review of a project plan, ecology will provide one of the following appraisals:

(i) Projects plans that appear to meet all requirements set forth in the protocol will be given a provisional status of being "validated."

(ii) Projects plans that do not appear to meet the necessary requirements of the protocol are not provided with a status, and will not be validated. Ecology will provide an explanation of the factors that led to that determination.

(g) Ecology will review the public comments for project plans that are in the provisionally valid status and make a final appraisal decision.

(h) Those project plans that have met the necessary standards will receive a final determination of being "validated" by ecology.

(11) Applicants may submit for ecology reconsideration a revised project plan and supporting documents for a project plan proposal failing to achieve "validated" status upon initial evaluation.

(12) A project report failing to achieve "validated" status through ecology may also be reevaluated under the third-party validation procedures in subsection (9) of this section.

(13) The electric utility requesting the project validation through either means identified in subsection (8) of this section must be provided with a validation report summarizing the process and the rationale for the decisions made by the validating entity. This validation report will also serve as the proof of validation for the approving body responsible for approving or rejecting the project that is intended as an energy transformation project.

(14) After a project is approved by the applicable approving body, and after the project comes into existence and is functioning, the electric utility must ensure that:

(a) Proper monitoring of the benefits of the project occur over time. The manner and means by which this monitoring occurs may vary between project types, and will be detailed in the comprehensive protocol.

(b) The benefits of the project are being reported over time to one or more bodies. The manner and means by which this reporting occurs will be detailed in the comprehensive protocol.

(15) After a project is approved by the applicable approving body, and after the project comes into existence, the electric utility must conduct or facilitate a performance

verification process to verify the actual benefits of the project over time. The manner, timing, and means by which this performance verification occurs may vary from project type, and will be detailed in the comprehensive protocol but will, at a minimum, require that:

(a) The third-party verifier, or the firm employing the verifier or verifying team, must be accredited or approved by at least one of the following:

(i) The American National Standards Institute National Accreditation Board accreditation program for Greenhouse Gas Validation/Verification Bodies.

(ii) The California Air Resources Board under California's Regulation for the Mandatory Reporting of GHG emissions.

(iii) Through another accreditation program by prior approval of ecology if it is deemed by ecology that the accreditation program is of equal stringency to (a)(i) or (ii) of this subsection.

(b) The firm employing the verifier or verifying team, or an independent verifier if there is no team or firm involved, must be able to demonstrate that there is no conflict of interest in their evaluation. All verifiers must sign the conflict of interest declaration through a form and process designated by ecology.

NEW SECTION

WAC 173-444-090 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

WSR 21-02-096
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed January 6, 2021, 11:56 a.m., effective February 6, 2021]

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

Purpose: WAC 314-55-020 Marijuana license qualifications and application process—Licensing change requests, the Washington state liquor and cannabis board has adopted a rule amendment to establish a certificate of compliance for marijuana business premises consistent with SSB 6206, (chapter 154, Laws of 2020), now codified as RCW 69.50.-331 (8)(e).

Citation of Rules Affected by this Order: Amending WAC 314-55-020.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Adopted under notice filed as WSR 20-22-042 on October 28, 2020.

A final cost-benefit analysis is available by contacting Casey Schaufler, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1760, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: January 6, 2021.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

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

(1) Consistent with RCW 69.50.331 (7) and (10), the WSLCB shall send a notice to cities and counties, tribal governments, and port authorities regarding the marijuana license application within said jurisdiction. The local authority, tribal government, or port authority has twenty days to respond with a recommendation to approve the application or an objection to the applicant, location, or both.

(2) Consistent with RCW 69.50.331 (8)((e)) (f), the WSLCB shall send a notice to tribal governments when an applicant or licensee is proposed to be located within the exterior boundaries of the reservation of a federally recognized Indian tribe. The tribal government will have twenty days to respond with an approval to the application. If written approval is not received within thirty days, the WSLCB will assume the tribe does not consent to the applicant's location and the applicant must find a new location.

(3) Applicants for a new marijuana producer, processor, retailer, transportation, or research license and those who apply to change their location must display a sign provided by the WSLCB on the outside of the premises to be licensed notifying the public that the premises are subject to an application for a marijuana license. Posting notices must occur within seven days of submitting the location confirmation form for new licenses or the change of location application for existing licensees. The WSLCB may check for compliance with this requirement at its discretion. The sign must:

(a) Not be altered. The licensee must post the sign sent by the WSLCB without changing, adding, or subtracting from the text;

(b) Be conspicuously displayed on, or immediately adjacent to, the premises subject to the application and in the location that is most likely to be seen by the public;

(c) Be of a size sufficient to ensure that it will be readily seen by the public, at a minimum these signs must be eight and one-half by eleven inches;

(d) Be posted within seven business days of the date the notice is sent to the applicant by the WSLCB; and

(e) The notice must be posted for fourteen consecutive days.

(4) All marijuana license applicants must meet the qualifications required by the WSLCB before they will be granted a license.

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

(6) Consistent with RCW 69.50.331 (8)(e), the WSLCB will issue a certificate of compliance if the proposed business premises meets the minimum distance requirements as of the date the application was received by the WSLCB. If the physical location changes during the application process, the certificate of compliance will be issued for the date that the premises change was received by the WSLCB. Applicants who were granted licenses prior to adoption of this rule are allowed to operate the business at the location notwithstanding a later occurring, otherwise disqualifying minimum distance factor.

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

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

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

~~((7))~~ (8) The WSLCB will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

~~((8))~~ (9) The WSLCB may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

~~((9))~~ (10) The WSLCB may conduct an inspection of the proposed or currently licensed business location, to determine if the applicant has complied with all the requirements of the license or change to the license or premises requested.

~~((10))~~ (11) Under RCW 69.50.331 (1)(c), all applicants applying for a marijuana license must have resided in the state of Washington for at least six months prior to application for a marijuana license. All business entities including, but not limited to, partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies, applying for a marijuana license must be

formed in Washington. All members, governors, or agents of business entities must also meet the six month residency requirement. Managers or agents who manage a licensee's place of business must also meet the six month residency requirement.

~~((11))~~ (12)(a) As part of the application process, each applicant must submit an operating plan outlining required elements for the location as provided in this chapter pertaining to the license type being sought. The operating plan must be submitted using an operating plan format supplied by the WSLCB. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed.

(b) After obtaining a license, the license holder must notify the WSLCB in advance of any change in their operating plan. Prior approval is required before the change may be implemented.

~~((12))~~ (13) The WSLCB may place licensing change applications made by a licensee on hold if the change application is reasonably related to an ongoing investigation.

(a) The WSLCB may withdraw licensing change applications pending the results of an adjudicative proceeding regarding a violation of chapter 314-55 WAC. Depending on the outcome of the adjudicative proceeding, the licensee may reapply for the withdrawn licensing change application(s).

(b) Examples of licensing change applications that may be affected under this subsection include:

- (i) Application for additional funding;
- (ii) Application for added medical marijuana endorsement;
- (iii) Assumption of a license;
- (iv) Change in governing people, percentage owned, or stock/unit ownership;
- (v) Change of location;
- (vi) Expanding plant canopy to maximum allotted;
- (vii) Request to alter marijuana site or operating plan;
- (viii) Request to add a processor license; and
- (ix) Splitting a producer and processor license.

~~((13))~~ (14)(a) To aid the WSLCB in monitoring the industry as it develops, the WSLCB requests that all applicants and licensees seeking renewal provide the following information:

- (b) **Employees compensation and benefits data.**
 - (i) Will the applicant/licensee provide a living wage (at least one hundred fifty percent of the state minimum wage) to eighty-five percent or more of its hourly employees?
 - (ii) Will the applicant/licensee provide health insurance to at least eighty-five percent of its hourly employees?
 - (iii) Will the applicant/licensee provide a defined benefit pension plan to at least eighty-five percent of its hourly employees?
 - (iv) Will the applicant/licensee provide five or more paid sick days annually to at least eighty-five percent of its hourly employees?

(v) Is there a signed labor peace agreement or collective bargaining agreement with a labor organization in place?

~~((14))~~ (15) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue and other state agencies, as an individual or as part of any entity in which they have an ownership

interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

~~((15))~~ (16) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

~~((16))~~ (17) Upon failure to respond to the WSLCB licensing and regulation division's requests for information and/or documentation within the timeline provided, the application may be administratively closed or denial of the application will be sought.